

PLANNING COMMISSION AGENDA
CITY OF NEWPORT BEACH
COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD
Thursday, November 17, 2011
Regular Meeting – 6:30 p.m.

CHARLES UNSWORTH
Chair

MICHAEL TOERGE
Vice Chair

BRADLEY HILLGREN
Secretary

ROBERT HAWKINS

FRED AMERI

KORY KRAMER

JAY MYERS

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

JAMES CAMPBELL, Principal Planner

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

ROSALINH UNG, Associate Planner

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200. The agendas, minutes and staff reports are also available on the City's web site at: <http://www.newportbeachca.gov>.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

NEWPORT BEACH PLANNING COMMISSION AGENDA
Council Chambers – 3300 Newport Boulevard
Thursday, November 17, 2011
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.

E. REQUEST FOR CONTINUANCES

F. CONSENT ITEMS

ITEM NO. 1 Minutes of November 3, 2011

ACTION: Approve and file.

G. PUBLIC HEARING ITEMS

ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE (3) MINUTES ON ALL ITEMS. (Red light signifies when three (3) minutes are up; yellow light signifies that the speaker has one minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours.

ITEM NO. 2 Newport Beach Country Club (PA2005-140)
1600 & 1602 East Coast Highway

SUMMARY: On October 20, 2011, the Planning Commission conducted a public hearing on the application submitted by the Golf Realty Fund to redevelop the existing golf clubhouse and tennis club. At the conclusion of the hearing, the Commission continued to public hearing to the subject meeting.

**CEQA
COMPLIANCE:**

The draft Initial Study/Mitigated Negative Declaration, responses to comments received, an Errata to the MND, and the Mitigation Monitoring and Reporting Program have been prepared are attached to the prior Planning Commission reports.

Staff believes that the environmental record is adequate, complies with the California Environmental Quality Act and all potential impacts of the project can be mitigated to a less than significant level. If the Commission concurs, staff recommends that the Commission recommend that the City Council adopt the environmental document.

ACTION:

- 1) Conduct a public hearing; and
- 2) Adopt a resolution recommending to the City Council the:

- a) Adoption of Mitigated Negative Declaration No. ND2010-008, an Errata to Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program;
- b) Approval of Planned Community Development Plan No. PC2005-002, as proposed by staff, for the entire 145-acre project site;
- c) Transfer of Development Rights No. TD2010-003 as proposed by the applicant;
- d) Approval of Site Development Permit No. SD2011-002 and Limited Term Permit No. XP2011-004, as proposed by the applicant, for the improvements to the 12-acre tennis club portion of the project site reserving for future consideration the identification of improvements to the 133-acre golf course portion of the project site;
- e) Approval of Vesting Tentative Tract Map No. NT2005-003 as proposed by the applicant; and
- f) Approval of Development Agreement No. DA2008-001.

ITEM NO. 3 Newport Beach Country Club (PA2008-152)
1600 East Coast Highway

SUMMARY: On October 20, 2011, the Planning Commission conducted a public hearing on the application submitted by the Newport Beach Country Club, Inc. to redevelop the existing golf clubhouse and parking lot and continued the public to the subject meeting.

CEQA COMPLIANCE: The draft Initial Study/Mitigated Negative Declaration, responses to comments received and the Mitigation Monitoring and Reporting Program are attached to the prior Planning Commission staff reports. The public hearing process has not identified to date any additional information to suggest that the environmental record is inadequate. If the Commission concurs, it is staff's recommendation that the Commission recommend the City Council adopt the environmental document.

ACTION: 1) Conduct a public hearing; and

 2) Adopt a resolution recommending to the City Council the:

- a) Adoption of Mitigated Negative Declaration No. ND2010-010, including the Mitigation Monitoring and Report Program;
- b) Approval of General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2005-002; and
- c) Approval of Site Development Review No. SD2011-003, Limited Term Permit No. XP2011-005, and Development Agreement No. DA2010-005.

H. NEW BUSINESS

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 Community Development Director's report.

ITEM NO. 5 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

ITEM NO. 6 Request for excused absences.

ADJOURNMENT

RECEIVED BY
COMMUNITY

NOV 14 2011

DEVELOPMENT
CITY OF NEWPORT BEACH

November 14, 2011

Newport Beach City Planning Commission

Attn: Charles Unsworth, Chair
Michael Toerge, Vice Chair
Bradley Hillgren, Secretary
Robert Hawkins
Fred Ameri
Kory Kramer
Jay Myers

3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658

Dear Planning Commissioners:

I implore the "powers that be" to preserve the ambiance and pure enjoyment of the Fun Zone. How sad to lose that small area that has been outdoor fun for young and old alike! I am so saddened by the look of the modern, sterile, cold building in the midst of our Fun Zone, taking up the space where the Merry-Go-Round or Carousel used to be. Is this a venture paid for by Tax Free donations? It is so out of place in this setting. What can our City Council and Planning Commission do about this?

Remember the lovely historical Bank of America building in the same area? Gone forever because money got it's way!

My children, grand-children and great-grandchildren have enjoyed the Merry-Go-Round, Ferris Wheel, bumper cars and pitch balls since the 1950s and so have so many. The Nautical Museum can have the ExplorOcean inside a building anywhere. There is only one Fun Zone!!

WAKE UP NEWPORT!

Sincerely,

Eleanor N. Ramsay

Eleanor N. Ramsay
2004 E. Ocean Blvd.
Balboa, CA 92660

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, November 3, 2011
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Commissioner Ameri

C. ROLL CALL

PRESENT: Ameri, Hawkins, Hillgren, Myers, Toerge, and Unsworth
ABSENT (EXCUSED): Kramer

Staff Present: Kimberly Brandt, Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Jaime Murillo, Associate Planner; Melinda Whelan, Assistant Planner; and Marlene Burns, Administrative Assistant

D. PUBLIC COMMENTS

Jim Mosher referenced the minutes from an earlier meeting relative to receiving public comments and the requirements of the Brown Act.

E. REQUEST FOR CONTINUANCES - None.

F. PLANNING COMMISSION APPOINTMENTS TO THE GENERAL PLAN/LOCAL COASTAL PROGRAM IMPLEMENTATION COMMITTEE

Community Development Director Brandt reported that currently there are three (3) seats that the Planning Commission has allocated to the Committee and currently Vice Chair Toerge is the sole representative. The Committee is an ad hoc Committee that has not met in over a year. She added that there are two (2) vacancies and staff felt it appropriate to ask the Chair if he would like to fill these vacancies so that at such time as the Committee were to reconvene there would be full representation.

Vice Chair Toerge affirmed his willingness to continue to be on the Committee.

Discussion followed regarding the schedule of meetings.

Vice Chair Toerge nominated Commissioner Hillgren to the Committee. Commissioner Hawkins seconded the nomination.

Chair Unsworth recommended Commissioner Hillgren and Commissioner Ameri to the Committee.

Interested parties were invited to address the Commission on this item.

Jim Mosher commented on the role of the Committee and referenced the Coastal Land Use Plan which shows two (2) areas within the City that have been excluded for many years from the Coastal Zone and identified these zones. He stated the original Coastal Act allowed such exclusions but only if they were made subject to an order conditioned on there being no future changes in the height, density, or nature of use. He noted that it is no longer a safe assumption for King's Road and part of Mariner's Mile. He encouraged the Committee to work on getting that part of the City back in the Coastal Zone. He also

encouraged the Commissioners to seek certification of the Coastal Program Implementation Plan so that residents do not have to take minor permit matters to the Coastal Commission.

Chair Unsworth appointed Commissioners Hillgren and Ameri to the General Plan/Local Coastal Program Implementation Committee.

G. CONSENT ITEMS

ITEM NO. 1 Minutes of October 20, 2011

Chair Unsworth recused himself from Items No. 2 and 3 because he is a Member of the Newport Beach Country Club.

Commissioner Myers recused himself from Items No. 2 and 3 due to his economic interest in Golf Realty Fund.

They left the dais and the Chambers.

The Minutes were considered in two (2) separate motions.

Motion by Commissioner Hawkins, seconded by Commissioner Hillgren, and carried (4 – 0) with two recusals (Myers and Unsworth) and one absent (Kramer) to approve Items 2 and 3 of the Minutes of October 20, 2011, as corrected.

AYES: Ameri, Hawkins, Hillgren, and Toerge
NOES: None.
ABSENT(RECUSED): Myers and Unsworth (Recused), Kramer (Absent)
ABSTAIN: None.

Chair Unsworth and Commissioner Myers returned to the Chambers and took their place on the dais.

Motion by Commissioner Hillgren, seconded by Commissioner Hawkins, and carried (6 – 0) with one absent (Kramer) to approve Items Nos. 1 and 4 through 9 of the Minutes of October 20, 2011, as corrected.

AYES: Ameri, Hawkins, Hillgren, Myers, Toerge, and Unsworth
NOES: None.
ABSENT(RECUSED): Kramer (Absent)
ABSTAIN: None.

H. PUBLIC HEARING ITEMS

ITEM NO. 2 Housing Element Update - (PA2008-078) 3300 Newport Blvd. Newport Beach

Associate Planner Murillo provided a PowerPoint presentation addressing an explanation of the House Element noting it is the only element that requires review by the State Department of Housing and Community Development. The Plan sets up a seven-year (7) plan to meet the existing and projected housing needs of all economic segments of the community. It identifies constraints to the development of housing and establishes goals, policies, and programs pertaining to housing needs of the City. Mr. Murillo addressed a brief history of the Housing Element including public workshops to provide an opportunity for members of the community to provide feedback. He listed meetings and actions taken since the development of the first draft of the Housing Element in 2008.

Mr. Murillo noted that the State Department of Housing and Community Development (HCD) has preliminarily approved the final draft currently proposed. Upon adoption of the Housing Element by the City Council, HCD will find the City consistent with all statutory requirements of State Housing Element Law. He described the Existing Housing Needs portion of the Housing Element and noted it includes an analysis of population and employment trends, an analysis of household characteristics, housing stock conditions, affordable housing projects and units at risk of conversion to market rate including resources, and programs to preserve those units. It also includes an analysis of special housing needs.

Mr. Murillo presented details of each major component of the Housing Element including Regional Housing Needs Assessment. He noted the City is not required to construct units, but it is required to show good faith effort in assisting in the development of housing and providing adequate sites to accommodate the projected housing needs. Mr. Murillo reported during the previous planning period that the City lost its certification of the Housing Element. Therefore, the State requires the City to carry over its unmet need from the previous planning period to housing projections for this planning period. He added 62 very-low income units and 83 moderate-income units were required to be carried over to this period's housing projection. He addressed total projected units.

Mr. Murillo explained the Site Analysis and Inventory and addressed housing opportunities and constraints regarding development of housing in the airport area. Specifically, Housing Program 3.2.2, which is proposed to address the potential constraint that Land Use Element Policy 6.15.6 poses to the development of affordable housing in the Airport Area due to a 10-acre site consolidation requirement and Housing Program 3.2.3, which is proposed to require the City to amend the Newport Place and Koll Center Planned Communities to allow residential development that includes thirty (30%) percent affordable units, subject to site development review. He addressed that the Housing Element includes other programs related to conservation and improvement of housing, variety of housing opportunities, adequate residential sites, provision and preservation of affordable housing, housing for special needs groups, fair housing and program monitoring. Mr. Murillo referenced the Negative Declaration that was prepared for the project noting that as a result, there are no significant impacts on the environment. He addressed circulation of the document, comments received, and preparation of responses by staff.

In response to Vice Chair Toerge's inquiry, Mr. Murillo reported the time period for review and submission of the Housing Element varies from planning period to planning period.

Commissioner Hawkins reported that he reviewed the document and expressed concerns with HCD's handling of the City's Zoning Code and General Plan. He felt their comments were not definitive regarding striking the 10-acre minimum or provide for revisions or the definition of an SRO. He opined that they were seeking justification as to why these were not constrained. He felt that the City is being required, pursuant to the Housing Element, to amend the General Plan and PC text. He opined there is justification for the overall approach taken with the General Plan and the Code.

Community Development Director Brandt reported the elimination of the 10-acre minimum would be a subsequent action in the implementation of the Housing Element Program. This would be done through a subsequent General Plan Amendment or other waiver provision, such as within the PC text amendment for the two (2) PC areas. She added that while maintaining a site development review requirement, the City has not waived its ability to look at each project on its own merit or its own design to ensure the density and project amenities are appropriate for the area. The intent is to eliminate the zoning code change that would be required since the City currently does not have the ability for a residential project to be proposed without an accompanying Planned Community text amendment for adoption. With the proposed program, a future applicant would be able to approach the City with solely a site development plan.

With regard to the Negative Declaration, Commissioner Hawkins opined that waiving the 10-acre requirement for residential development in the Airport Area results in land use impacts. He also stressed that the City could justify the minimum 10-acre site requirement to HCD.

Chair Unsworth opened the public hearing.

James Kawamura spoke on behalf of himself and an owner in Newport Place noting that they would be affected by the changes. He addressed the elimination of the 10-acre minimum requirement and expressed concerns with the restrictions that were proposed. He spoke in support of eliminating the 10-acre minimum requirement, but expressed concerns with the thirty (30%) percent requirement for affordable housing. Mr. Kawamura inquired regarding the thirty-five (35%) percent density bonus, and the calculation and design of the units eligible for the density bonus.

Mr. Murillo reported that the details of the PC amendment have not yet been worked out, but clarified that the density bonus allowed by the City would be calculated based on the total number of units proposed, including the affordable units. In addition, he stated that the affordable units could be smaller and finished with different materials within the interiors.

In response to Commissioner Hawkins's question, Mr. Murillo noted the General Plan Amendment and/or PC text changes would require follow through and return to the Commission and the City Council.

Community Development Director Brandt responded to Commissioner Hawkins' inquiry clarifying that the Housing Element is a General Plan Amendment. Any subsequent program pursuant to the Housing Element would be reviewed according to an appropriate level. If the Planning Commission in its recommendation to the City Council considers an amendment to the PC text that is in conflict with the Housing Element, it would be appropriate to amend the Housing Element at that time. Depending on what it is, staff may need to resubmit the Housing Element to the State in order to maintain its consistency finding.

Chair Unsworth closed the public hearing.

Motion by Commissioner Hillgren, seconded by Commissioner Ameri, and carried (5 - 1) with one absent (Kramer) to adopt the Resolution recommending adoption of the draft 2008-2011 Housing Element to the City Council and the Negative Declaration.

AYES: Ameri, Hillgren, Myers, Toerge, and Unsworth
NOES: Hawkins
ABSENT(RECUSED): Kramer (Absent)
ABSTAIN: None.

I. NEW BUSINESS

Commissioner Ameri inquired regarding a document received relative to the November 17, 2011, meeting wherein one agenda item will be considered.

J. STAFF AND COMMISSIONER ITEMS

ITEM NO. 3 Community Development Director's report.

Community Development Director Brandt reported that two (2) applications for the Newport Beach Country Club were continued to the November 17, 2011, Planning Commission meeting. She reported the Planning Commission can start at its normal time of 6:30 p.m.

She reported the Lido Village Design Guidelines will be presented to the Ad Hoc Committee next week, November 10, 2011, at 4:00 p.m. in Council Chambers. She added the Housing Element will be presented to the City Council at their meeting of November 22, 2011.

In response to Commissioner Ameri's questions, Ms. Brandt reported that staff has met with the different applicants to discuss different issues and foresees the possibility of good news to report and that progress is being made.

Regarding the Dolphin Striker, Ms. Brandt reported that the Council reviewed the appeals for Bubbles and Dolphin Striker applications. Both were approved by the City Council.

ITEM NO. 4 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report - None.

ITEM NO. 5 Request for excused absences.

Commissioner Myers requested to be excused as he will recuse himself on both items being heard at the November 17, 2011, Planning Commission due to the fact that he has an economic interest in Golf Realty Fund.

ADJOURNMENT – 7:23 p.m.

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

November 17, 2011

Agenda Item: 2

SUBJECT: Newport Beach Country Club (PA2005-140)
1600 & 1602 East Coast Highway

- Mitigated Negative Declaration No. ND2010-008
- Planned Community Development Plan No. PC2005-002
- Transfer of Development Rights No. TD2010-003
- Site Development Permit No. SD2011-002
- Vesting Tentative Tract Map No. NT2005-003
- Limited Term Permit No. XP2011-004
- Development Agreement No. DA2008-001

APPLICANT: Golf Realty Fund, Property Owner

PLANNER: Rosalinh M. Ung, Associate Planner
(949)644-3208, rung@newportbeachca.gov

INTRODUCTION

On October 20, 2011, the Planning Commission conducted a public hearing on the application submitted by the Golf Realty Fund to redevelop the existing golf clubhouse and tennis club. At the conclusion of the hearing, the Commission expressed general acceptance of the proposed development located on the tennis club portion of the project site (bungalows, villas, tennis courts and tennis clubhouse). The Commission did not provide specific direction regarding the applicant's proposal as it relates to the golf clubhouse and associated parking lot.

RECOMMENDATION

1. Conduct a public hearing; and
2. Adopt Resolution No.____ (Attachment PC1) recommending to the City Council:
 - a) Adoption of Mitigated Negative Declaration No. ND2010-008, an Errata to Mitigated Negative Declaration, and the Mitigation Monitoring and Reporting Program;
 - b) Approval of Planned Community Development Plan No. PC2005-002, as proposed by staff, for the entire 145-acre project site;
 - c) Transfer of Development Rights No. TD2010-003 as proposed by the applicant;
 - d) Approval of Site Development Permit No. SD2011-002 and Limited Term Permit No. XP2011-004, as proposed by the applicant, for the

improvements to the 12-acre tennis club portion of the project site reserving for future consideration the identification of improvements to the 133-acre golf course portion of the project site;

- e) Approval of Vesting Tentative Tract Map No. NT2005-003 as proposed by the applicant; and
- f) Approval of Development Agreement No. DA2008-001.

DISCUSSION

Environmental Review – Mitigated Negative Declaration

The draft Initial Study/Mitigated Negative Declaration, responses to comments received, an Errata to the MND, and the Mitigation Monitoring and Reporting Program are attached to the prior reports. The Commission requested clarifications as to whether there would be potential significant impacts to land use compatibility and aesthetic impacts of the two (2) projects as proposed by the applicant and NBCC, Inc.

The potential land use conflicts between the two (2) projects have been adequately addressed through NBCC's redesign of the project, which includes increased physical separation between the proposed structures as well as enhanced landscaping to provide adequate screening. The architectural styles proposed for the applicants' golf clubhouse ("California Coastal" versus "Americana Prairie") are distinctly different and a matter of preference, and they do not constitute a significant land use conflict nor create incompatibility between land uses under CEQA guidelines. No significant land use conflicts or incompatibility is anticipated.

Response to Commission's comments have been revised and attached as Attachment PC2. Staff believes that the environmental record is adequate, complies with the California Environmental Quality Act and all potential impacts of the project can be mitigated to a less than significant level. If the Commission concurs, staff recommends that the Commission recommend that the City Council adopt the environmental document.

Planned Community Development Plan (PCDP) – Adoption of Staff Alternative

The draft PCDP encompasses the entire 145-acre golf club and tennis sites (Attachment PC3). It provides use and development standards for the golf course, a 35,000 square-foot golf clubhouse including ancillary maintenance facilities, 27 hotel rooms (Bungalows) including the ancillary spa and meeting rooms, five (5) single-family homes (Villas), seven (7) tennis courts, and a 3,725 square-foot tennis clubhouse. The draft PCDP does not set forth an architectural style for any development and it does not fix the design of the parking lot for the golf course and clubhouse. The final architectural

design and the parking lot configuration would be a component of a Site Development Review application.

Transfer of Development Intensity

During the October 20, 2011, hearing on the project, the owner of the Marriott Hotel property, Host Hotels and Resorts, proposed a “use conversion solution” as an alternative to the applicant’s request for a transfer of development intensity. The alternative approach was based upon the eliminated tennis courts’ (17) development intensity being converted to hotel rooms or building floor area. Although traffic is not an issue, staff does not believe the conversion of tennis courts to building floor area is consistent with the General Plan, as there is no available building floor area or hotel room allocation in this General Plan Anomaly area. The attached memorandum provides additional detailed analysis (Attachment PC4).

Site Development Review

The applicant has prepared two (2) comparison site plans (with and without a guard house and perimeter fencing) to illustrate that the applicant’s parking lot layout would work with the larger clubhouse proposed by NBCC, Inc. (Attachment PC5). These comparison site plans are not proposed or requested for approval by the applicant. Both comparison plans provide for the larger NBCC, Inc. clubhouse and required parking. It is not known whether the grades would work and additional information would be necessary to potentially implement such a plan. These plans have been forwarded to NBCC, Inc. and they have indicated that these plans would not work for them.

If the Commission wishes to consider NBCC’s application for a proposed golf clubhouse and parking lot at a subsequent public hearing, staff recommends that the Commission approve the applicant’s Site Development Review application as it relates to the tennis club portion of the site. It would include the 27 hotel rooms (Bungalows) including the ancillary spa and meeting rooms, five (5) single-family homes (Villas), seven (7) tennis courts, and a 3,725 square-foot clubhouse. The golf course, including its ancillary maintenance facilities, the golf clubhouse, including its associated parking lot, the entry drive, and landscaping along Coast Highway would be reserved for future consideration.

Vesting Tentative Tract Map

The applicant’s proposed vesting tentative tract map subdivides tennis club site portion of the project site. It would create separate lots for the five (5) single-family homes, a lot for the proposed hotel, a lot for the tennis club facility, several open space lots, and a lot encompassing the proposed private street that would serve the hotel and homes. Findings for approval of the map are provided in the draft resolution for Planning Commission to consider.

Limited Term Permit

Should the Planning Commission choose to approve only the tennis club portion of the project site, the approval of limited term permit would only be applicable to the temporary modular buildings proposed to accommodate on-going tennis club operation during the 18-month construction period.

Development Agreement

The draft development agreement and a discussion of its contents are provided in a separate report.

Prepared by:



Rosalinh Ung, Associate Planner

Submitted by:



James Campbell, Principal Planner

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Revised Response to Planning Commission on Draft MND
- PC 3 Draft Planned Community Development Plan
- PC 4 Conversion of Tennis Courts to Floor Area or Hotel Rooms Memorandum
- PC 5 Comparison Site Plans

Attachment No. PC 1
Draft Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING ADOPTION OF A MITIGATED NEGATIVE DECLARATION NO. 2010-008 AND APPROVAL OF PLANNED COMMUNITY DEVELOPMENT PLAN ADOPTION NO. PC2005-002, TRANSFER OF DEVELOPMENT INTENSITY NO. 2010-003, VESTING TENTATIVE MAP NO. 2005-003, SITE DEVELOPMENT PERMIT NO. SD2011-002, LIMITED TERM PERMIT NO. 2011-004, AND DEVELOPMENT AGREEMENT NO. 2008-001, FOR THE NEWPORT BEACH COUNTRY CLUB PROPERTY LOCATED AT 1600 & 1602 EAST COAST HIGHWAY (PA2005-140)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Golf Realty Fund, with respect to property located at 1600 & 1602 East Coast Highway, and legally described as Parcels 1 and 3 of Parcel Map No. 79-704 and a Portion of Back Bay Drive as Shown on Parcel Map No. 79-704, requesting an approval to redevelop the existing private golf course and tennis club of the Newport Beach Country Club. The following applications are requested or required in order to implement the project as proposed:
 - a. A Planned Community Development Plan adoption to provide development standards and design guidelines for the golf course and tennis club and their ancillary uses, pursuant to Chapter 20.63 of the Municipal Code.
 - b. Transfer of Development Rights to transfer 27 hotel units from Anomaly No. 43 (Newport Beach Marriott Hotel and Spa site) to Anomaly No. 46 (the Tennis Club site), pursuant to General Plan Land Use Policies LU4.3 and LU6.14.3.
 - c. A Site Development Permit to allow the construction of 35,000 square-foot golf clubhouse and parking lot, twenty-seven (27) hotel units with a 2,170 square-foot concierge and guest meeting facility and a 7,490 square-foot spa/fitness center, five (5) single-unit residential dwellings, a 3,725 square-foot tennis clubhouse, and one lighted stadium-center tennis court, pursuant to the Section 4.3 of the Newport Beach Country Planned Community Development Plan.
 - d. A Vesting Tentative Tract Map to create separate lots for five (5) single-unit residential dwellings, twenty (27) hotel units, lettered lots for common areas and a private street, pursuant to Title 19 of the Municipal Code.
 - e. A Limited Term Permit (Temporary Structures and Uses) to allow temporary use of structures during construction pursuant to Section 20.60.015 of the Municipal Code.

- f. A Development Agreement pursuant to Section 15.45.020.A.2.c of the Municipal Code which requires a development agreement as the project includes a zoning code amendment and new non-residential development in Statistical Area L1 (Newport Center/Fashion Island) and General Plan Land Use Policy LU6.14.8 which requires a development agreement since the proposed project is a mixed-use development project and the proposed five (5) single-family units will be drawn from the 450 residential units allocated for the Newport Center/Fashion Island.
2. The application was deemed complete on November 5, 2009; and pursuant to Ordinance No. 2010-21, the application is being considered and evaluated pursuant to the Zoning Code in effect prior to November 25, 2010.
3. The subject property is designed by the General Plan Land Use Element category of Parks and Recreation (PR) for the Golf Club site and Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR) for the Tennis Club site. The project site is zoned Planned Community (PC-47) Zoning District.
4. The subject property is located within the coastal zone and has the Coastal Land Use Plan designates the site Parks and Recreation (PR) for the Golf Club site and Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR) for the Tennis Club site.
5. Public hearings were held on August 4, 2011, October 20, 2011, and November 17, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on September 20, 2010, and ending on October 19, 2010. The contents of the environmental document and comments on the document were considered by the Planning Commission in its review of the proposed project.
3. An Errata has been prepared which clarifies and augments data in the document in responses to comments, and supports the conclusions reached in the draft MND. Consistent with CEQA Guidelines section 15073.5(c), recirculation of the MND is not required when new information is added to the MND which merely clarifies, amplifies, or makes insignificant modifications to the MND.

4. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to less than significant levels.
5. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

1. The proposed project is consistent with the General Plan and Coastal Land Use Plan as follows:
 - a. The project site is located within Newport Center/Fashion Island. The Land Use Element of the General Plan designates the golf club site Parks and Recreation (PR) and the tennis club site Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR).

The PR designation allows active public or private recreational uses including parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities.

The MU-H3/PR designation on the Tennis Club site provides for the horizontal intermixing of regional commercial office, hotel, single-family and multi-family residential and ancillary commercial uses.
 - b. The General Plan limits total development at the Golf Club site to 35,000 square feet (Anomaly No. 74) and 3,725 square feet and 24 tennis courts at the Tennis Club site (Anomaly No. 46). Residential is also permitted in Anomaly No. 46, in accordance with MU-3/PR designation. The proposed new golf clubhouse is consistent with the General Plan development limit of 35,000 square feet. The existing 3,725 square-foot tennis clubhouse will be replaced with a new tennis clubhouse of same the square footage established for Anomaly No. 46. The five (5) single-unit dwellings will be drawn from the maximum 450 dwelling units that are allowed in the Newport Center/Fashion Island Statistical Area (there are unallocated 20 units remaining at this time).

- d. In order to accommodate the development of the proposed 27 hotel-unit development (bungalows), the applicant is requesting a transfer of 27 un-built hotel units from Anomaly No. 43 (Newport Beach Marriott Hotel & Spa site) to Anomaly No. 46 (Tennis Club site). The proposed transfer is permissible in accordance with General Plan Land Use Policies LU4.3(d) and LU16.14.3.
- e. The Coastal Land Use Plan designates the Golf Club portion of the project site as Parks and Recreation (PR), and the Tennis Club portion of the project site is designated as Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR). The MU-H3/PR designation recognizes the private recreational tennis courts and the potential development of short-term rental visitor accommodations and single-family residential units. Policy 2.1.8-1 allows the horizontal intermixing of short-term rental units and single-family homes with the expanded tennis club facilities. Permitted uses include those permitted by the MU-H3 and PR categories. MU-H3 allows horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multi-family residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. PR category allows active public or private recreational use including parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The adoption of planned community district development plan (PCDP) will ensure building design and siting regulations will protect coastal resources, including protection of views, and public access through height, setback, floor area, lot coverage, building bulk, and improved pedestrian access in accordance with Policy 2.2.2-4. The proposed project will provide visitor-serving and recreational facilities as required in Policy 2.3.2-2. The proposed redevelopment of the project site is therefore consistent with the Coastal Land Use designations.
- f. The subject property has a zoning designation of Planned Community (PC-47). This PC zoning designation was adopted in 1997 by Ordinance 97-10, as a part of the City-wide amendment to the districting maps, in order to be consistent with the 1988 General Plan Land Use Element and Zoning Code. The City later assigned the PC with a number of 47 for tracking purposes. A Planned Community Development Plan (development regulations), was not adopted when the PC District zoning designation was assigned to the subject property. The Tennis Club is governed separately by Use Permit No. 1492 and its' subsequent amendments, which is typical when a PC does not have development standards. No use permit was issued on the Golf Club site.
- g. The applicant proposes a PCDP to provide use regulations, density, and intensity of the proposed uses and very specific development regulations (building height, square footage, setbacks, and parking standard) for each use, including architectural styling and a complete internal vehicular and pedestrian circulation system for both the Golf Club and Tennis Club sites. Because the proposed PCDP contains detail and design regulations that are too specific and

provide inflexible standards that are inappropriate for the project implementation and long-term administration, an alternative PCDP has been prepared.

- h. The alternative PCDP contains necessary development regulations to accommodate the Golf Club and Tennis Club sites as a single, cohesive and comprehensive large-scale planned development. The alternative PCDP also provides a requirement that a site development review process be completed for construction of any new major building structure (i.e. clubhouse, residential dwelling unit, hotel unit, spa facility, etc.), and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permit to ensure new development proposals within the PCDP are consistent with the goals and policies of the General Plan and the standards set for in the adopted PCDP.

- 2. Transfer of Development Intensity. General Plan Land Use Policy LU4.3 lists a number of criteria for transfer of development rights. In particular, transfer of development rights in Newport Center/Fashion Island (Statistical Area L1) is governed by Policy LU6.14.3. In accordance with General Plan Land Use Policy LU6.14.3, development rights may be transfer within the Newport Center/Fashion Island with the finding that the transfer is consistent with the intent of the General Plan and the finding that the transfer will not result in any adverse traffic impacts.

Finding:

- A. *The transfer is consistent with the intent of the General Plan.*

Facts in Support of Finding:

- A-1. The transfer of 27 hotel rooms from Anomaly Area 43 to Anomaly Area 46 is consistent with the intent of the General Plan as follows:
 - a. The donor site (The Marriott Hotel) has a General Plan Land Use designation of CV (Visitor Serving Commercial) and the site is developed with 532-room resort hotel. The transfer of 27 un-built hotel units would reduce future development potential from 611 hotel units to 584, without some future transfer of development intensity in Anomaly No. 42. The recipient site (the Tennis Club site) is designated MU-H3/PR that allows commercial uses including hotels, residential uses and recreational uses. The transfer is consistent with the MU-H3 and PR designations and doe not increase the overall development intensity in Statistical Area L1.

Finding:

B. The transfer will not result in any adverse traffic impacts.

Facts in Support of Finding:

- B-1. The twenty-seven hotel units generate 15 A.M., 16 P.M. and 221 average daily trips based upon Institute of Traffic Engineers (ITE) Trip Generation Rates (7th Edition). This increase in traffic is entirely off-set by the traffic associated with the elimination of 17 tennis courts (22 A.M, 56 P.M and 658 average daily trips based upon ITE Trip Generation Rates). As a result, traffic generated by the proposed project would decrease by 389 daily trips, 3 A.M. trips, and 35 P.M. trips.
- B-2 The design regulations for the hotel rooms set forth in the Planned Community Development Plan will ensure that the proposed hotel use and the physical improvements for the hotel rooms will not lend themselves to conversion to higher traffic-generating uses.
3. Site Development Review – The applicant proposes a Site Development Review to allow the redevelopment of the existing golf clubhouse and tennis club, pursuant to the Section 4.3 of the PCDP.

Finding:

A. The Site Development Plan shall be in compliance with all other provisions of the Newport Beach Country Club Planned Community Development Plan.

Facts in Support of Finding:

- A-1. A site development review application has been submitted in accordance to Section 4.0 of the draft PCDP. The portion of the application that applies to the 12-acre tennis club site meets the intent specified in Section 20.52.080 (Site Development Review) of the Municipal Code as the portion of the site based upon the plans provides a coordinated and comprehensive project and will result in a superior built environment thereby creating an amenity for the community. The 133-acre Golf Club site has been reserved for future consideration.

Finding:

B. The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.

Facts in Support of Finding:

- B-1. The portion of the application that applies to the 12-acre tennis club site includes California Coastal architecture, landscaping components, circulation design, all other project components reflected in the site development review application for the development of the tennis club site are compatible with the character of the neighboring uses and surrounding sites. As a result, the proposed development for the tennis club site is not detrimental to the orderly and harmonious development of the surroundings and the City. The 133-acre Golf Club site has been reserved for future consideration.

Finding:

C. The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.

Facts in Support of Finding:

- C-1. The portion of the application that applies to the 12-acre tennis club site provides one and two story building masses that are carefully sited and represent a comprehensive and coordinated plan. The size, mass and location of structures, the architectural detailing, landscaping, circulation, and signage maximize the aesthetic quality of the project. The proposed villas and bungalows are located over 300 feet from East Coast Highway and adequate landscaping and open space separate the proposed development from East Coast Highway. The 133-acre Golf Club site has been reserved for future consideration.

Finding:

D. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

Facts in Support of Finding:

- D-1. The site plan proposed for the tennis club site and layout of its buildings, parking areas, pedestrian and vehicular access ways, landscaping, and other site features maximize the functionality of the proposed uses, while avoiding conflicts between uses and activities. The villas, bungalows, tennis club, and each of their related amenities have been carefully designed and sited to function cohesively not only with each other, but also with the existing adjacent golf club uses. The 133-acre Golf Club site has been reserved for future consideration.

4. Vesting Tentative Tract Map. The applicant proposes a vesting tentative tract map on the Tennis Club site to create separate lots for the five (5) single-unit residential dwellings, twenty-seven (27) hotel units, the tennis club facility, their common open space areas and a private street to support the propose uses. In accordance with Section 19.12.070 of the Newport Beach Municipal Code, and the following finding and facts in support of such findings are set forth:

Findings

A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

- A-1. The project is consistent with the Parks and Recreation designation for the golf club site and Mixed Use Horizontal 3/Park and Recreation (MU-H3/PR) designation for the tennis club site.
- A-2. The Public Works Department has reviewed the proposed tentative map and finds it is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-3. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

- B-1. The existing site is entirely developed and does not support any environmental resources. The project site is adequate in size to accommodate the proposed development. There are no topographic/geologic constraints.
- B-2. The subject site is located in Newport Center/Fashion Island and currently improved with a private golf course (Newport Beach Country Club) and a private tennis club (former Balboa Bay Racquet Club). Given its location which is adjacent to the Fashion Island mixed-use of retail, office, and residential development and major road intersections, this site is ideal for the development of recreation and mixed use development as allowed by the General Plan Land Use Element.

Findings

C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may*

nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

- C-1. A Mitigated Negative Declaration has been prepared and supports a finding that no significant environmental impacts will result with proposed development of the site in accordance with the proposed subdivision map.

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

- D-1. The proposed Tract Map is for the subdivision parcels in order to accommodate the development of the tennis club and courts, five (5) single-unit residential dwellings, and twenty-seven (27) hotel units on the tennis club site. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems.
- D-2. All mitigation measures will be implemented as outlined in the Mitigated Negative Declaration to ensure the protection of the public health.
- D-3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. No other public easements for access through or use of the property have been retained for use by the public at large.

Finding:

F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

F-1. The property is not subject to the Williamson Act since the subject property is not considered an agricultural preserve and is less than 100 acres.

Finding:

G. *That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

G-1. The property is not a “land project” as defined in Section 11000.5 of the California Business and Professions Code.

G-2. The project is not located within a specific plan area.

Finding:

H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

H-1. The proposed Tract Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City’s residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1. The proposed Tract Map does not involve the elimination of residential units and therefore will not affect the City's ability to meet its share of housing needs.

Finding:

J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. Waste discharge into the existing sewer system will be consistent with the existing commercial use of the property and does not violate Regional Water Quality Control Board (RWQCB) requirements.
- J-2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The subject property is located in the Coastal Zone and is not located in proximity to nor provides public access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails. The existing recreational uses (golf course and tennis club) are private and the elimination of 17 tennis courts does not impact use of public recreational opportunities.
5. Development Agreement – According to General Plan Land Use Element Policy LU6.14.8, a development agreement is required since the proposed project is a mixed-use development project and the proposed five (5) single-family units will be drawn from the 450 residential units allocated for the Newport Center/Fashion Island. Furthermore, Municipal Code Section 15.45.020.A.2.c (Development Agreement Required) requires a development agreement as the project includes a zoning code amendment and new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). The development agreement includes all the mandatory elements for consideration and includes public benefits that are appropriate to support conveying the vested development rights.

SECTION 4. DECISION.

1. The Planning Commission of the City of Newport Beach does hereby find, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis. The Planning Commission hereby recommends that the City Council adopt Mitigated Negative Declaration, including the Mitigation Monitoring and Reporting Program attached as Exhibit "A". The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
2. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.
3. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council adopt Planned Community Development Plan No. PC2005-002 for the entire project site, as depicted in Exhibit "B" attached hereto and incorporated by reference.
4. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Transfer of Development Rights No. TD2010-003, Site Development Review No. SD2011-002 for the improvements to the tennis site only (twenty-seven (27) hotel units with a 2,170 square-foot concierge and guest meeting facility and a 7,490 square-foot spa/fitness center, five (5) single-unit residential dwellings, a 3,725 square-foot tennis clubhouse, and one lighted stadium-center tennis court) , and Limited Term Permit No. XP2011-004 for the temporary modular buildings to be located on tennis site only, subject to the conditions set forth in Exhibit "C", which is attached hereto and incorporated by reference. The 133-acre Golf Club site has been reserved for future consideration.
6. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Development Agreement No. DA2008-001 as attached as Exhibit "D"

PASSED, APPROVED AND ADOPTED THIS 17TH DAY OF NOVEMBER, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Charles Unsworth, Chairman

BY: _____
Bradley Hillgren, Secretary

EXHIBIT "A"**MITIGATION MONITORING AND REPORTING PROGRAM**

(All references to the golf course or golf clubhouse are reserved for future consideration)

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
Aesthetics					
SC-1	Prior to the issuance of building permits, the applicant shall prepare a photometric study in conjunction with a final lighting plan for approval by the Planning Division. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Planning Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Planning Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.	Approval of photometric study	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 3	Planning Division
Agricultural and Forest Resources					
No significant impacts are anticipated and no mitigation measures are required.					
Air Quality					
SC-2	Adherence to SCAQMD Rule 402, which prohibits air contaminants or other materials that cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property to be emitted within the SoCAB.	Periodic monitoring during construction	During construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Community Development Department
SC-3	Adherence to SCAQMD Rule 403, which sets requirements for dust control associated with grading and construction activities.	Periodic monitoring during construction	During construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Community Development Department
SC-4	Adherence to SCAQMD Rules 431.1 and 431.2, which require the use of low sulfur fuel for stationary construction equipment.	Periodic monitoring during construction	During construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Community Development Department
SC-5	Adherence to SCAQMD Rule 1108, which sets limitations on ROG content in asphalt.	Periodic monitoring during construction	During construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Community Development Department

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
SC-6	Adherence to SCAQMD Rule 1113, which sets limitations on ROG content in architectural coatings.	Periodic monitoring during construction	During construction activities	<u>Tennis Club Site:</u> Phases 2-4 <u>Golf Club Site:</u> Phases 2-4	Community Development Department
SC-7	Adherence to Title 24 energy-efficient design requirements as well as the provision of window glazing, wall insulation, and efficient ventilation methods in accordance with the requirements of the Uniform Building Code.	Submit evidence of compliance during building plan check process	Prior to issuance of building permits	<u>Tennis Club Site:</u> Phases 2-4 <u>Golf Club Site:</u> Phases 3-4	Building Division
Biological Resources					
No significant impacts to biological resources are anticipated; no mitigation measures are required.					
Cultural Resources					
SC-8	A qualified archaeological/paleontological monitor shall be retained by the project applicant who will be present during the grading and landform alteration phase. In the event that cultural resources and/or fossils are encountered during construction activities, ground-disturbing excavations in the vicinity of the discovery shall be redirected or halted by the monitor until the find has been salvaged. The area surrounding any cultural materials or fossils encountered during grading shall also be investigated to determine the extent of the site. Any artifacts and/or fossils discovered during project construction shall be prepared to a point of identification and stabilized for long-term storage. Any discovery, along with supporting documentation and an itemized catalogue, shall be accessioned into the collections of a suitable repository. Curation costs to accession any collections shall be the responsibility of the project applicant.	Submit proof of qualified archaeological/paleontological monitor	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 1	Planning Division
MM-1	The City shall provide an opportunity for a Native American representative to monitor excavation activities. The representative shall be determined by the City based on input from concerned Native American tribes (i.e., Gabrielino, Juaneño, and Tongvas).	Submit proof of Native American observer	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 1	Planning Division
Geology and Soils					
SC-9	All grading operations and construction shall comply with the applicable City of Newport Beach Grading Code and Grading Manual and the most recent version of the California Building Code.	Periodic monitoring during grading and construction	During grading and construction operations	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
SC-10	Prior to issuance of the grading permit, an erosion control plan shall be submitted to and approved by the City's Building Division.	Approval of erosion control plan	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phases 1-3 <u>Golf Club Site:</u> Phases 1-4	Building Division
SC-11	Prior to issuance of a grading permit, the applicant shall submit a soil engineering report and final geotechnical report to the City's Building Division for approval.	Submittal of soils engineering report and final geotechnical report	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 2	Building Division
MM-2	The project shall be designed to incorporate the recommendations included in "Revised Preliminary Geotechnical Design Parameters for the NBCC Planned Community" (April 25, 2008) and "Report of Geotechnical Studies and Review of Vesting Tentative Tract Map No. 15347" (May 2, 2008) prepared by GMU Geotechnical that address site grading, site clearing, compaction, bearing capacity and settlement, lateral pressures, footing design, seismic design, slabs on grade, retaining wall design, subdrain design, concrete, surface drainage, landscape maintenance, etc. The Building Division shall review the grading plan to ensure conformance with recommendations contained in the final geotechnical report.	Submittal of geotechnical reports	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 1	Building Division
Greenhouse Gas Emissions					
SC-12	All new buildings shall meet Title 24 requirements.	Submit evidence of compliance during building plan check process	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 3	Building Division
SC-13	Water conservation design features shall be incorporated into building and landscape designs.	Submit evidence of compliance	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 2	Planning Division and Public Works Department
PDF-1	Design of buildings shall take into account the location of building air intake to maximize ventilation efficiency and incorporate natural ventilation.	Submit evidence of compliance during plan check process	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 2	Building Division

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
PDF -2	The buildings shall incorporate energy-conserving heating and lighting systems.	Submit evidence of compliance during building plan check process	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 2	Building Division
PDF -3	The project shall incorporate fast-growing, low water use landscape to enhance carbon sequestration and reduce water use.	Submit evidence of compliance during landscape plan review and upon field verification	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 2	Planning Division and Public Works Department
Hazards and Hazardous Materials					
SC-14	Prior to any disturbance of the construction materials within the Golf Clubhouse and/or the Tennis Clubhouse, a comprehensive asbestos containing materials (ACM) and lead based paint (LBP) survey shall be conducted. Any repairs, renovations, removal or demolition activities that will impact the ACM and/or LBP or inaccessible ACM shall be performed by a licensed asbestos contractor. Inaccessible suspect ACM shall be tested prior to demolition or renovation. Proper safety procedures for the handling of suspect ACM and LBP shall be followed in accordance with federal, state and local regulatory requirements federal and California Occupation Safety and Health Administration (OSHA), and Air Quality Management District (AQMD) Rule 1403, which sets forth specific procedures and requirements related to demolition activities involving asbestos containing materials and SCAQMD Regulation X - National Emission Standards For Hazardous Air Pollutants, Subpart M - National Emission Standards For Asbestos, which include demolition activities involving asbestos.	Submit ACM and LBP survey and site inspection	Prior to issuance of demolition permit for buildings	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 3	Building Division
SC-15	During demolition, grading, and excavation, workers shall comply with the requirements of Title 8 of the California Code of Regulations Section 1532.1, which provides for exposure limits, exposure monitoring, respiratory protection, and good working practice by workers exposed to lead. Lead-contaminated debris and other wastes shall be managed and disposed of in accordance with the applicable provision of the California Health and Safety Code.	Periodic monitoring during demolition and site inspection	During demolition, grading and excavation	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division
Hydrology and Water Quality					
SC-16	Prior to issuance of a grading permit, the project applicant shall be required to submit a notice of intent (NOI) with the appropriate fees to the State Water Quality Resources Control Board for coverage of such future projects under the General Construction Activity	Submit evidence of NOI filing	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2	Building Division and Public Works Department

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
	Storm Water Runoff Permit prior to initiation of construction activity at a future site. As required by the NPDES permit, a Storm Water Pollution and Prevention Plan (SWPPP) will be prepared and will establish BMPs in order to reduce sedimentation and erosion.			<u>Golf Club Site:</u> Phase 1	
SC-17	Prior to issuance of a grading permit, the project applicant shall prepare a Water Quality Management Plan (WQMP) for the project and submit the WQMP to the City of Newport Beach for approval. The WQMP shall specifically identify Best Management Practices (BMPs) that will be used to control predictable pollutant runoff, including flow/volume-based measures to treat the "first flush." The WQMP shall identify at a minimum the routine structural and non-structural measures specified in the Countywide NPDES Drainage Area Master Plan (DAMP), which details implementation of the BMPs whenever they are applicable to a project, the assignment of long-term maintenance responsibilities, and shall reference the locations of structural BMPs.	Approval of WQMP	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 1	Building Division and Public Works Department
SC-18	Prior to issuance of a grading permit, the project applicant shall prepare a Storm Water Pollution and Prevention Plan (SWPPP). The SWPPP will establish BMPs in order to reduce sedimentation and erosion and prevent construction pollutants from leaving the site. The project shall also incorporate all monitoring elements as required in the General Construction Permit. The project applicant shall also develop an erosion and sediment control plan to be reviewed and approved by the City of Newport Beach prior to issuance of grading permit.	Submit SWPPP Approval of erosion and sediment control plan	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phase 2 <u>Golf Club Site:</u> Phase 1	Building Division and Public Works Department
SC-19	Future site grading and construction shall comply with the drainage controls imposed by the applicable building code requirements prescribed by the City of Newport Beach.	Submit evidence of compliance and site inspection	During grading and construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division and Public Works Department
Land Use and Planning					
No significant impacts are anticipated and no mitigation measures are required.					
Mineral Resources					
No significant impacts are anticipated and no mitigation measures are required.					
Noise					
MM-3	During rock crushing operations, a temporary barrier using a pile of accumulated demolition debris or a sound blanket shall be used if a direct line of sight exists between the crusher and any off-site homes.	Show on grading plans and site inspection	During rock crushing operations	<u>Tennis Club:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
MM-4	All construction equipment, stationary and mobile, shall be equipped with properly operating and maintained muffling devices.	Show on grading plans and site inspection	During construction activities	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division
MM-5	Prior to issuance of a grading permit, a construction schedule shall be developed that minimizes potential project-related and cumulative construction noise levels.	Submit construction schedule and site inspection	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Community Development Department
MM-6	The construction contractor shall notify the residents of the construction schedule for the proposed project, and shall keep them informed on any changes to the schedule. The notification shall also identify the name and phone number of a contact person in case of complaints. The contact person shall take all reasonable steps to resolve the complaint.	Submit evidence of compliance and site inspection	Prior to issuance of grading permit	<u>Tennis Club Site:</u> Phases 1-4 <u>Golf Club Site:</u> Phases 1-4	Building Division
MM-7	Heating, venting, and air conditioning (HVAC) equipment in or adjacent to residential areas shall be shown by computation, based on the sound rating of the proposed equipment, not to exceed an A-weighted sound pressure level of fifty (50) dBA or not to exceed an A-weighted sound pressure level of fifty-five (55) dBA.	Submit evidence of HVAC equipment sound rating (adjacent to residential areas) during building plan check process	Prior to issuance of building permit	<u>Tennis Club Site:</u> Phases 2-4 <u>Golf Club Site:</u> Phases 2-4	Community Development Department
Population and Housing					
No significant impacts are anticipated and no mitigation measures are required.					
Public Services					
No significant impacts are anticipated and no mitigation measures are required.					
Recreation					
No significant impacts are anticipated and no mitigation measures are required.					
Transportation/Traffic					
MM-8	Prior to commencement of each major phase of construction, the Contractor shall submit a construction staging, parking and traffic control plan for approval by the Public Works Department, which shall address issues pertaining to potential traffic conflicts during peak traffic periods, potential displacement of on-street parking, and safety. This plan shall identify the proposed construction staging area(s), construction crew parking area(s), estimated number and types of vehicles that will occur during each phase, the proposed arrival/departure routes and operational	Approval of construction staging, parking and traffic control plan	Prior to commencement of each major phase of construction	<u>Tennis Club Site:</u> Phase 1-4 <u>Golf Club Site:</u> Phases 1-4	Planning Division and Public Works Department

SC/ PDF/ MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Applicable Phase(s)	Responsibility
	safeguards (e.g. flagmen, barricades, etc.) and hourly restrictions, if necessary, to avoid traffic conflicts during peak traffic periods and to ensure safety. If necessary, the construction staging, parking and traffic control plan shall provide for an off-site parking lot for construction crews which will be shuttled to and from the project site at the beginning and end of each day. The plan shall identify all construction traffic routes. The approved construction staging, parking traffic control plan shall be implemented throughout each major construction phase.				
MM-9	The left turn pocket on Irvine Terrace at the Coast Highway shall be increased in length to a minimum of 100 feet plus transition in order to adequately accommodate left-turn movements.	Construct improvement or provide equivalent bonds	Prior to issuance of building permit	<u>Golf Club Site:</u> Phase 3	Public Works Department
Utilities and Service Systems					
No significant impacts are anticipated and no mitigation measures are required.					

EXHIBIT "B"

NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DEVELOPMENT PLAN

EXHIBIT "C"
CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

COMMUNITY DEVELOPMENT DEPARTMENT

1. *Development shall be in substantial conformance with Vesting Tentative Tract Map No. NT2005-003, Site Development Review No. SD2011-002 for the improvements to the tennis club portion of the project site only, and Limited Term Permit No. XP2011-004, stamped and dated with the date of this approval (Except as modified by applicable conditions of approval.)*
2. *Vesting Tentative Tract Map No. NT2005-003 is approved for the development located on the Tennis Club site which consists of the subdivision of five (5) single-unit residential dwellings, twenty-seven (27) hotel units and related amenities, the tennis club facility, their common open space areas and a private street.*
3. *Vesting Tentative Tract Map No. NT2005-003 shall expire if the map has not been recorded within the term of Development Agreement No. DA2008-001, unless an extension is otherwise granted.*
4. *Site Development Review No. SD2011-002 is approved for the development of:*
 - a. A 3,725 square-foot tennis clubhouse and one lighted stadium-center tennis court.
 - b. Twenty-seven (27) hotel units with a 2,170 square-foot concierge and guest meeting facility, and a 7,490 square-foot spa/fitness center.
 - c. Five (5) single-unit residential dwellings.
 - d. The 133-acre Golf Club site has been reserved for future consideration. The plans shall be revised to remove all representations of future development on the 133-acre Golf Club site.
5. *Limited Term Permit No. XP2011-004 is limited to the 12-acre Tennis Club site and approved for the use of:*
 - a. *Two (2) temporary modular buildings to accommodate on-going tennis club operation during the 18-month construction of new golf clubhouse. The modular buildings shall be located on the existing tennis courts, shall not interfere with the construction activities or parking, and shall be removed from the Tennis Club site upon completion/occupancy of the new clubhouse.*

6. *Site Development Review No. SD2011-002 and Limited Term Permit No. XP2011-004 shall expire unless exercised within the term Development Agreement No. DA2008-001, unless an extension is otherwise granted.*
7. *Any substantial change to the approved plans, shall require an amendment to Site Development Review No. SD2011-002, Limited Term Permit No. XP2011-004 and/or Vesting Tentative Tract Map No. NT2005-003 or the processing of new permits.*
8. *A minimum of 28 parking spaces shall be provided and maintained for The Tennis Club (tennis courts and clubhouse) as provided on the approved plans.*
9. *A minimum of two (2) enclosed parking spaces shall be provided and maintained for Villas #A, B, and E and a minimum of three (3) enclosed parking spaces shall be provided and maintained for Villas #C & D, as provided on the approved plans. Additionally, each of The Villas (single-unit residential dwellings) shall be provided with an open guest parking space which can be located on the private driveway.*
10. *A minimum of 34 parking spaces shall be provided and maintained for The Bungalows (27-unit hotel development) as provided on the approved plans.*
11. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
12. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
13. Should this business or property be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
14. This Site Development Review and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/ or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
15. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar

permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.

16. All landscape materials and landscaped areas shall be installed and maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
17. Prior to the final of issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
18. Reclaimed water shall be used for all landscape areas.
19. Water leaving the project site due to over-irrigation of landscape shall be minimized to the maximum extent feasible.
20. Watering of landscape areas shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.).
21. Water shall not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
22. Prior to issuance of any permit for development, approval from the California Coastal Commission shall be required.
23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

24. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not permitted outside of these hours or on Sundays or Holidays.

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25. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Community Development Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
 26. Storage outside of buildings or within the parking lot of the property shall be prohibited, with the exception of the required trash container enclosure.
 27. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
 28. All proposed signs shall be in conformance with the provision of the Newport Beach Country Club Planned Community Development Plan and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.
 29. The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.
 30. Lighting shall be in compliance with applicable standards of the Newport Beach Country Club Planned Community Development Plan and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.
 31. The entire development shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Newport Beach Municipal Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
 32. Prior to the issuance of a building permit, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
 33. Prior to issuance of the certificate of occupancy or final of building permits on the Tennis Club site the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
 34. Kitchen exhaust fans for the clubhouses shall be installed/maintained in accordance

with the Uniform Mechanical Code and with pollution control units to filter and control odors.

35. *The construction and equipment staging area for each phase of the development shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
36. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction for each phase of the development.*
37. *Construction equipment and materials shall be properly stored on the site when not in use for each phase of the development.*
38. Prior to the issuance of any building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
39. Prior to the issuance of any building, the applicant shall pay all applicable development fees (i.e. school, in-lieu park, fair share, and transportation corridor agency), unless otherwise addressed separately in the Development Agreement.
40. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Newport Beach Country Club development including, but not limited to Planned Community Development Plan No. PC2005-002, Vesting Tentative Tract Map No. NT2005-003, Transfer of Development Rights No. TD2010-003, Development Agreement No. DA2008-001, Limited Term Permit No. XP2011-004, Mitigated Negative Declaration No. ND2010-008, and Site Development Permit No. SD2011-002. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
41. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

42. Prior to the issuance of grading permits for development, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
43. Prior to issuance of grading permits for development, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
44. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
45. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with five percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.

- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. All construction roads internal to the construction site that have a traffic volume of more than 50 daily trips by construction equipment, or 150 total daily trips for all vehicles, shall be surfaced with base material or decomposed granite, or shall be paved.
- l. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads.
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.

Unpaved Staging Areas or Roads

- n. Water or non-toxic soil stabilizers shall be applied, according to manufacturers' specifications, as needed to reduce off-site transport of fugitive dust from all unpaved staging areas and unpaved road surfaces.

FIRE DEPARTMENT

- 46. Automatic fire sprinklers shall be required for all new construction that exceeds 5,000 square feet in size, is located more than 150 feet from an approved fire access road, and/or based on occupancy classification. The sprinkler system shall be monitored by a UL certified alarm service company.
- 47. All buildings may require a fire alarm system depending upon occupancy classification.
- 48. Fire hydrant(s) shall be provided every 300 feet along fire access road. The number and location of the fire hydrant shall be determined by the Fire Department.
- 49. Fire Department turnarounds shall have a minimum diameter of 80 feet with no parking allowed.
- 50. All elevators shall be gurney accommodating.

51. The use or storage of portable propane heaters is prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.

PUBLIC WORKS DEPARTMENT

52. The Final Tract Map shall be legible, scaled, dimensioned, and complete with all necessary pertinent information and details such as easement limits and descriptions; annotated lot lines, centerlines, and boundary lines; signature certificates; curve and line tables; etc.
53. The Final Tract Map shall be prepared on the California coordinate system (NAD88). Prior to Map recordation, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said Map in a manner described in the Orange County Subdivision Code and Orange County Subdivision Manual. **The Final Tract Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
54. Prior to recordation, the Final Map boundary shall be tied onto the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the City Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
55. A hydrology and hydraulic study and a master plan of water, sewer and storm drain facilities for the on-site improvements shall be prepared by the applicant and approved by the Public Works Department prior to Final Tract Map recordation.
56. Easements for public emergency and security ingress/egress, weekly refuse service, and public utility purposes on all private streets shall be dedicated to the City.
57. No structures shall be constructed within the limits of any utility easements.
58. All easements shall be recorded as a part of the Final Tract Map.
59. All applicable fees shall be paid prior to the City approval of the Final Tract Map.
60. Construction surety in a form acceptable to the City, guaranteeing the completion of the various required public improvements, shall be submitted to the Public Works Department prior to the City approval of the Final Tract Map.
61. Street, drainage and utility improvements shall be submitted on City standard improvement plan formats. All plan sheets shall be sealed and signed by the California licensed professionals responsible for the designs shown on the Plans.

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62. All improvements shall be designed and constructed in accordance with the current edition of the City Design Criteria, Standard Special Provisions, and Standard Drawings.
 63. All storm drain and sanitary sewer mains shall be installed with MacWrap.
 64. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
 65. New concrete sidewalks, curbs, gutters, curb disabled access ramps, roadway pavement, traffic detector loops, traffic signal devices, and street trees shall be installed along the development's Coast Highway frontage.
 66. Public improvements may be required along the development's Granville Drive frontage upon building permit plan check submittal.
 67. All on-site drainage, sanitary sewer, water and electrical systems shall be privately owned, operated, and maintained.
 68. All curb return radii shall be 5-feet (5') minimum.
 69. Each dwelling unit or bungalow building shall be served with an individual water service and sewer lateral connection.
 70. All overhead utilities serving the entire proposed development shall be made underground.
 71. ADA compliant curb ramps shall be installed within the interior parking area.
 72. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing STD-110-L. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.
 73. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
 74. The parking lot and vehicular circulation system shall be subject to further review and approval by the City Traffic Engineer. Parking layout shall be per City Standard STD 805-L-A and STD 805-L-B. Parking layout shall be full dimensioned. On-street parking spaces shall be 8 feet wide by 22 feet long. Drive aisles to parking areas shall be 26 feet wide minimum. The one-way drive aisle adjacent to The Bungalow's

concierge office and guest meeting building shall be 14 feet wide minimum with no parking, otherwise the drive aisle shall be widened to accommodate parking.

75. Cul-de-sacs shall comply with City Standard STD-102-L and STD-103-L and shall have a minimum diameter of 80 feet curb to curb.

MITIGATION MEASURES

76. The applicant shall comply with all mitigation measures and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the adopted Mitigated Negative Declaration (Exhibit "A") for the project.

EXHIBIT "D"
DEVELOPMENT AGREEMENT

Attachment No. PC 2

Revised Response to Planning
Commission on Draft MND

**Response to Comments - Golf Realty Fund
Newport Beach Planning Commission
August 4, 2011 (Revised November 17, 2011)**

PC Comments on the Golf Realty Fund (O'Hill) project:

Comment No. 1

Address the land use impacts of the two projects (i.e., interface and cumulative impacts)

Response to Comment No. 1

The relationship between the two projects ("the GRF Plan" and "the IBC Plan") has evolved in several respects. In reviewing this relationship, it is important to note that the IBC Plan includes only the golf clubhouse and the golf club parking lot, while the GRF Plan includes the golf areas, but also proposes Bungalows (hotel units), the Tennis Club (private recreational use), and the Villas (five single family residences) on property immediately adjacent to the golf club portion of the Planned Community.

Potential land use conflicts between the IBC Plan and the GRF Plan were considered in the revised golf clubhouse in the IBC Plan. These revisions have resulted in greater physical separation between the golf clubhouse and GRF's proposed Bungalows, Tennis Club, and Villas. The porte cochere in the original IBC Plan was 260' from the GRF's closest Villa, while the revised IBC Plan shows the distance at 315'. The nearest Bungalow structure is now proposed to be 165 feet from the porte cochere, compared to approximately 128 feet in the previous IBC Plan. There also is a 95-foot separation between the nearest Bungalow and the bag drop area near the porte cochere, compared to approximately 57 feet in the prior IBC Plan. In addition, IBC has modified the footprint of the golf clubhouse so that the nearest Bungalow structure will be about 131 feet from the clubhouse, or approximately the same distance as the prior IBC Plan (134 feet). When compared to the previously proposed IBC Plan, the increased physical separation of these uses, combined with the landscaping proposed for IBC's revised golf clubhouse, would "soften" the land use interface between IBC's proposed golf course clubhouse and GRF's proposed adjacent Bungalow and residential uses. As a result, potential land use conflicts between the two projects have been adequately addressed through redesign of the IBC project, which includes increased physical separation between the proposed structures as well as enhanced landscaping to provide adequate screening. Therefore, no significant land use conflicts or incompatibility is anticipated and no mitigation measures are required.

The parking lot design of the two proposals differs in ways that the two applicants each believe are important. The IBC Plan shows parking lanes running perpendicular to the golf clubhouse, whereas the GRF plan shows those lanes running parallel to the golf clubhouse. The IBC Plan directs circulation for both automobiles and golf carts from the clubhouse area down ramps to the southern end of the parking lot in order to enter the parking lot circulation pattern. The GRF Plan provides access to the parking lot circulation pattern at the northern end of the parking lot closest to the golf clubhouse. IBC believes that its circulation pattern best serves the needs of its members and guests and will function efficiently and effectively, while GRF believes that its circulation pattern is more convenient for members and guests, will avoid congestion within the parking field and at the entrance to the Planned Community, and, therefore, will be more compatible with other uses (such as the Bungalows, Tennis Club, and Villas) within the Planned Community.

Another area where questions have been raised with respect to compatibility between the plans is architectural style. The GRF Plan proposes consistent architectural style throughout the Planned Community, including the golf clubhouse, and specifically identifies "California Coastal" as the

architectural theme. The IBC Plan proposes Prairie-style architecture for the golf clubhouse. While the character created by the two differing architectural styles is distinctly different, the difference does not constitute a significant land use conflict nor create incompatibility between land uses under CEQA. The issue of architecture is related to project design, which is subject to site plan and design review by the City and, ultimately, the Planning Commission and City Council. As previously indicated, no significant land use conflicts and/or incompatibility would occur between the golf clubhouse proposed by IBC and the mixed use development (i.e., bungalow/spa, tennis club, and single-family residential) proposed to the east.

Additionally, the size and location of the golf clubhouse differ in the two plans. Cross Sections comparing the GRF Plan with the IBC Plan illustrate the differences between the two projects. Exhibit 1 illustrates the relationship of GRF's proposed golf course clubhouse to the existing clubhouse when viewed from the east. Based on that comparison, the maximum height of the proposed clubhouse is 53' 6", compared to the approximately 22-foot height of the existing clubhouse. GRF's proposed clubhouse is located approximately 424 feet north of East Coast Highway, or approximately 80 farther north than the existing clubhouse at 344 feet from that arterial. IBC's proposed clubhouse is approximately 300 feet from East Coast Highway and approximately 44 feet closer to East Coast Highway than the existing golf clubhouse. When viewed from East Coast Highway (refer to Exhibit 2), GRF's proposed clubhouse is approximately the same width as the existing clubhouse (i.e., 265 feet wide versus 262 feet wide), whereas IBC's proposed clubhouse is approximately 44% wider (378 feet wide versus 262 feet wide). The relative differences between the two proposed golf course clubhouses and the existing NBCC clubhouse is presented in Table 1.

Table 1

Height/Width Analysis

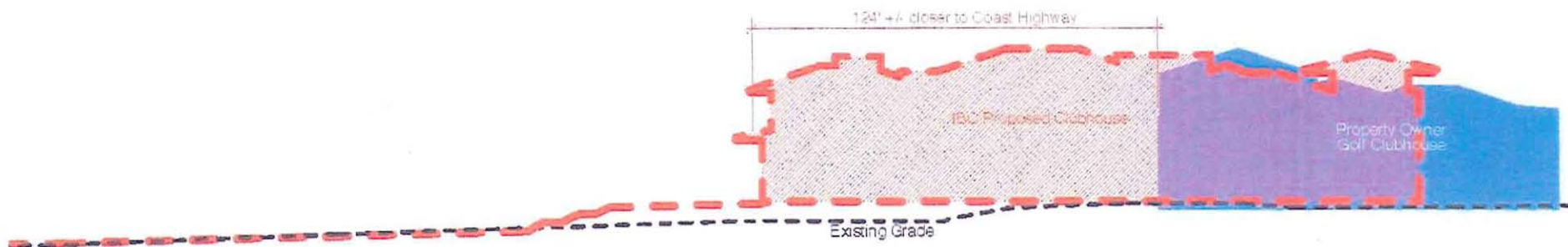
	Existing Clubhouse	GRF Clubhouse Proposal	IBC Clubhouse Proposal
Height at Peak ¹	22 Feet +/-	53.5 Feet	52 Feet +/-
Distanced from PCH	344 Feet	424 Feet	300 Feet
Width as seen from PCH ²	262 Feet	265 Feet	378 Feet
¹ As measured from lowest existing grade directly below point. ² Width measured parallel to East Coast Highway.			
SOURCE: Golf Realty Fund			

Comment No. 2

Assess the proposed Golf Realty Fund Planned Community Development Plan

Response to Comment No. 2

The GRF Plan would amend the existing Planned Community No. 47 (Newport Beach Country Club Planned Community), which was adopted in 1997 by Ordinance 97-10. It is important to note that No. 47 that was assigned to the PC for the purpose of tracking and a Planned Community Development Plan was not adopted when the PC District zoning designated was assigned to the 145-acre property, including the Armstrong Nursery property, which is not included as part of the proposed project.



GOLF CLUBHOUSE SITE SECTION COMPARISONS

NEWPORT BEACH COUNTRY CLUB



updated 10/26/2011



GOLF COURSE



GOLF CLUBHOUSE SITE SECTION COMPARISONS

NEWPORT BEACH COUNTRY CLUB



updated 10/3/2011

The GRF Plan is intended to establish the development standards and design guidelines for the proposed project. As originally submitted, GRF's Planned Community Development Plan (the "GRF PCDP") included use regulations, development density and intensity parameters for the proposed uses and very specific development regulations (e.g., building height, floor area, setbacks, and parking) for each of the proposed uses. (Note: The Tennis Club and Armstrong Nursery are currently governed separately by the use permits approved for each.) The GRF PCDP prescribes specific architectural character and design for all of the structures, including the golf clubhouse, the Bungalows, the Tennis Club, and the Villas. In addition, the GRF PCDP also establishes detailed standards for the internal circulation, including pedestrian and vehicular systems proposed within the three distinct elements of the proposed project. Finally, the GRF PCDP, as originally submitted, includes the detailed site plan, elevations, and floor plans for each of the land use components, landscape plan and lighting plan. If adopted, the GRF PCDP will regulate development within the proposed project.

Comment No. 3

Assess the potential impacts of eliminating 17 tennis courts

Response to Comment No. 3

According to the property owner, the licensee of the existing private Tennis Club also operates two other Tennis Clubs. The Toluca Lake Tennis Club maintains 7 tennis courts that support a membership of 350 members, resulting in an average of 50 members for each tennis court. In addition, Palisades Tennis Club in Newport Beach, also with 7 courts, has a membership of 224 and a per court ratio of 32 members/court. The applicant has suggested a ratio of one tennis court for each 35 members. The current membership of the existing Tennis Club combined with the 7 tennis courts that are proposed to remain (i.e., elimination of 18 existing tennis courts and a new "center court") would yield a ratio of 31 members per court. Based on the recommended members-to-tennis courts ratio (35:1), the "proposed" Tennis Club could support 46 additional members, for a total of 245 members. As a result, no significant impacts would be anticipated to occur.

As indicated in the project description and above, implementation of the proposed project would result in the elimination of 18 of the 24 tennis courts that currently exist on the subject property, leaving only seven tennis courts, including one new "center court." As a private club, the existing tennis courts are not generally available for public play. While the club has allowed the Corona del Mar and Sage Hill tennis teams to use the facilities, use of the facilities by those teams was a temporary accommodation to allow the schools to complete work on their own courts. Nonetheless, as reflected in the Recreation Element of the City's General Plan, "... private facilities, including yacht clubs, golf courses, and country clubs are also facilities that serve residents of Newport Beach." As such, it may be true that private recreation facilities such as the existing tennis facility could serve to "offset," to some degree, the demand for public recreation through the availability of the private tennis courts to a limited segment of the population within the City of Newport Beach and nearby areas.

According to the Newport Beach Recreation Element, two recreational service areas have adequate parkland and/or recreation facilities: Service Area No. 9 (Newport Center) and Service Area No. 11 (Harbor View). The proposed project is located within Service Area No. 9 as illustrated in Figure R11 in the Recreation Element. As of June 2005, two (public) recreational facilities exist within this service area, including the Back Bay View Park and the Newport Dunes Aquatic Park, which together encompass 19.1 acres. Based on the 2005 population within this service area, a total of only 10.9 acres of parkland is required, resulting in a net surplus of 8.1 acres of public parkland in Service Area No. 9.

Although the existing tennis courts may provide some recreational opportunities within the service area, the (net) loss of 17 of the 24 tennis courts would not be considered a significant adverse impact. This is due to the fact that the ongoing use of the Tennis Club will continue to be limited to members and their guests and, as discussed above, are expected to adequately serve those needs. In addition, the elimination of the tennis courts is not considered to be significant in light of the Recreation Element determination that no deficiency in parkland and/or recreational facilities exists or is anticipated to occur within Service Area No. 9.

As evaluated in the initial study and elaborated upon in various responses to comments, implementation of the proposed project would not substantially increase the use of existing neighborhood and regional parks and/or cause the substantial physical deterioration of any park facility. Furthermore, based on the findings in the Newport Beach Recreation Element, the project would not require the construction of or expansion of recreational facilities. Therefore, for the reasons cited above, the reduction in the number of courts would not be expected to deprive the public of playing opportunities, overburden the club, or place an increased demand on public facilities. As a result, no additional recreational facilities beyond those identified above within the service area, including tennis facilities, are necessary within the designated recreational service area.

Comment No. 4

Assess the aesthetic impacts of the elevations, perspectives, and cross sections for the project

Response to Comment No. 4

The character of the proposed project is illustrated in several elevations. As indicated in Exhibit 3 and Exhibit 4, GRF's proposed golf course clubhouse reflects a California Coastal architectural style.

The proposed Bungalows, Tennis Club clubhouse, and Villas would reflect a similar character and style as illustrated in elevations shown in Exhibit 5 (Tennis Clubhouse and Bungalow Spa) and Exhibit 6 and Exhibit 7 (Villas - Plans A and B), resulting in a fully integrated character of each of the land use components within the Planned Community. The architectural style for all of the proposed Villa dwelling units will be similar to Units A and B.

A panoramic view of the ocean is available from the top of Newport Center Drive circle straight ahead down Newport Center Drive towards Coast Highway. However, only "peek-a-boo" ocean view now exists from Newport Center Drive across the site of the Planned Community. Referencing Exhibits 8, 9, and 10, that narrow view occurs between the last Granville Condominium unit and the McMonigle Group office building (refer to Exhibit 8, "View from Point 1") and after the McMonigle Group office building located at the intersection of Newport Center Drive and the private Granville Road (refer to Exhibit 10, "View from Point 3"). The improvements proposed by GRF would not result in any significant visual impact on the "View from Point 1," and only a barely perceptible change in the "View from Point 3," which would also have a less than significant impact on the visual/aesthetic character of the area.

The GRF Plan would also result in less than significant impacts on the Public View Point in Irvine Terrace Park. The only significant public view from Irvine Terrace Park is oriented toward Newport Bay and the Pacific Ocean. Because the NBCC PCD is located on the inland side of Coast Highway from Irvine Terrace Park, that view cannot and would not be impacted. Furthermore, the wall buffering Irvine Terrace Park from Coast Highway, together with the buildings in Corporate Plaza West and the existing landscaping, makes the Golf Club Parking Lot the only area within the Planned Community visible from Irvine Terrace Park (refer to Exhibit 11, "View from Point 4"). The view of the Golf Club Parking Lot would be improved aesthetically as a result of a large landscaped berm along Coast Highway and four rows of perpendicular landscaping in the Golf Club Parking Lot. As a result, no significant visual impacts would

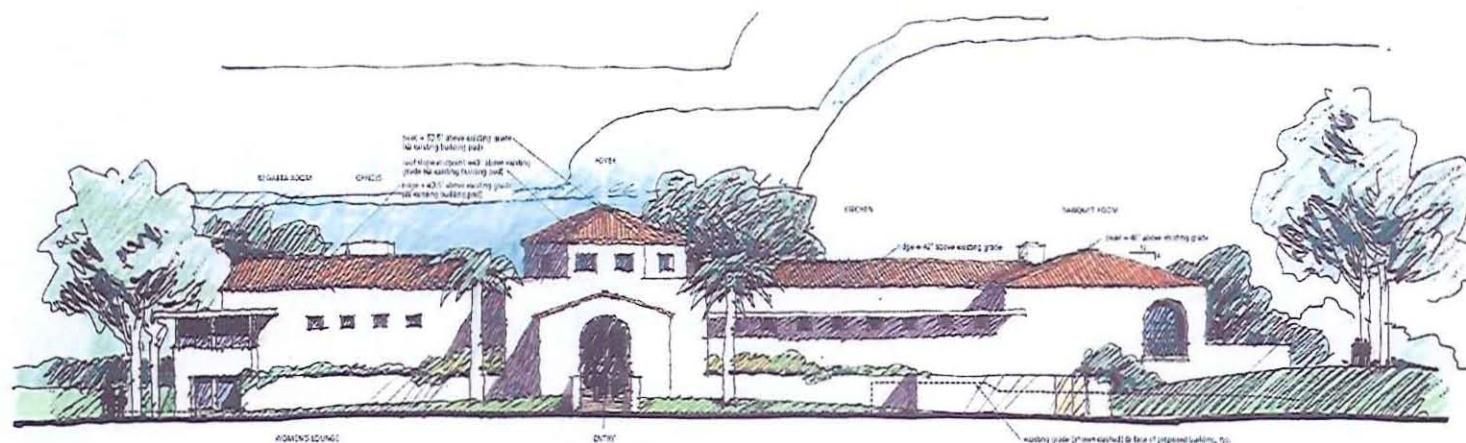
occur from this view location. Overall, implementation of the proposed project would not result in any significant visual impacts; no mitigation measures are required.

GOLF CLUBHOUSE

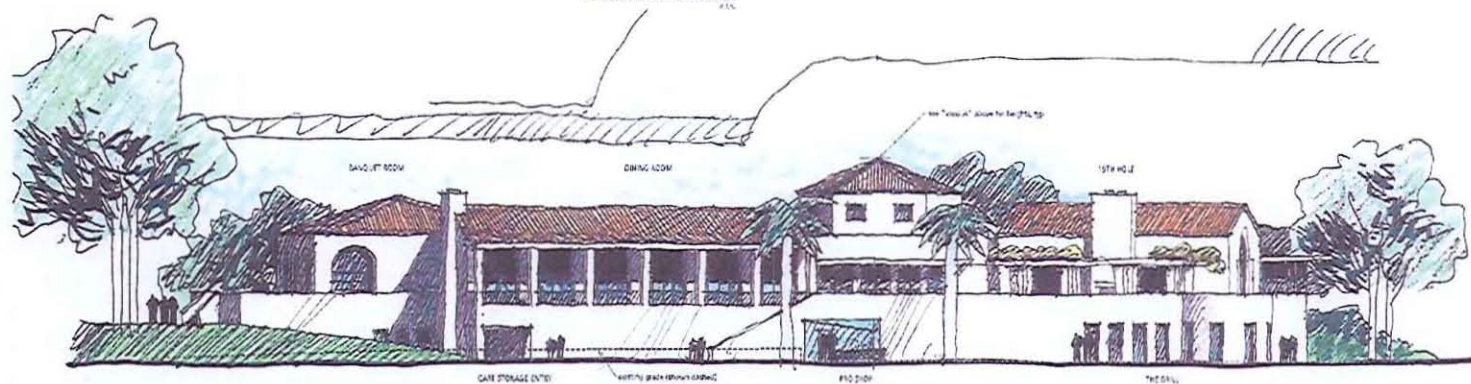
ELEVATIONS

MATERIALS

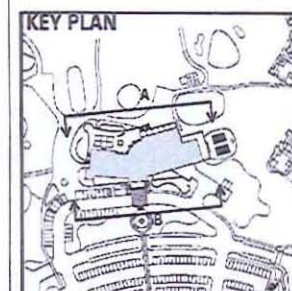
- smooth steel-troweled exterior plaster
- La Playa Beach stone
- Gladding, McBean clay roof tile blend #8 with Italian pans and Cordova covers
- Torrance steel window system



A. VIEW FROM PARKING AREA



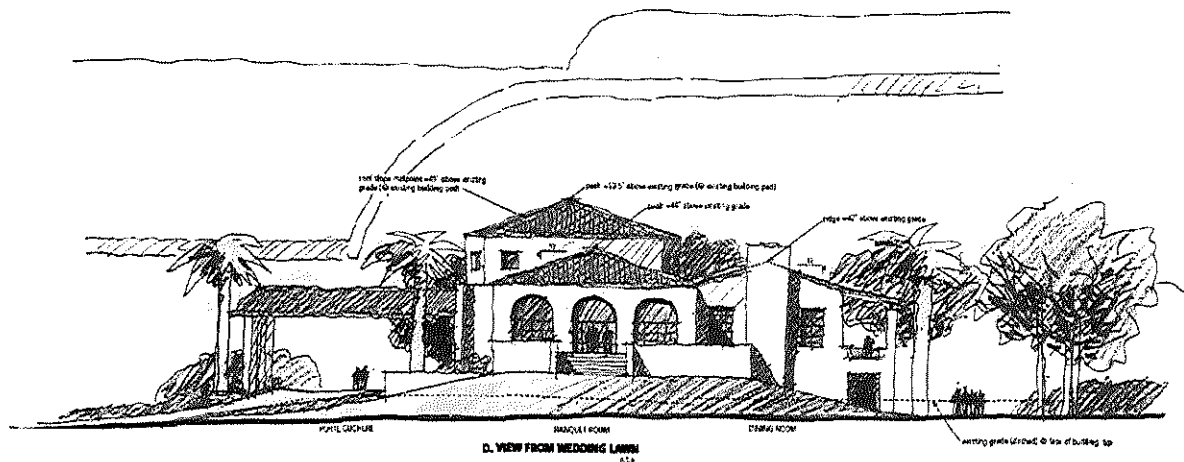
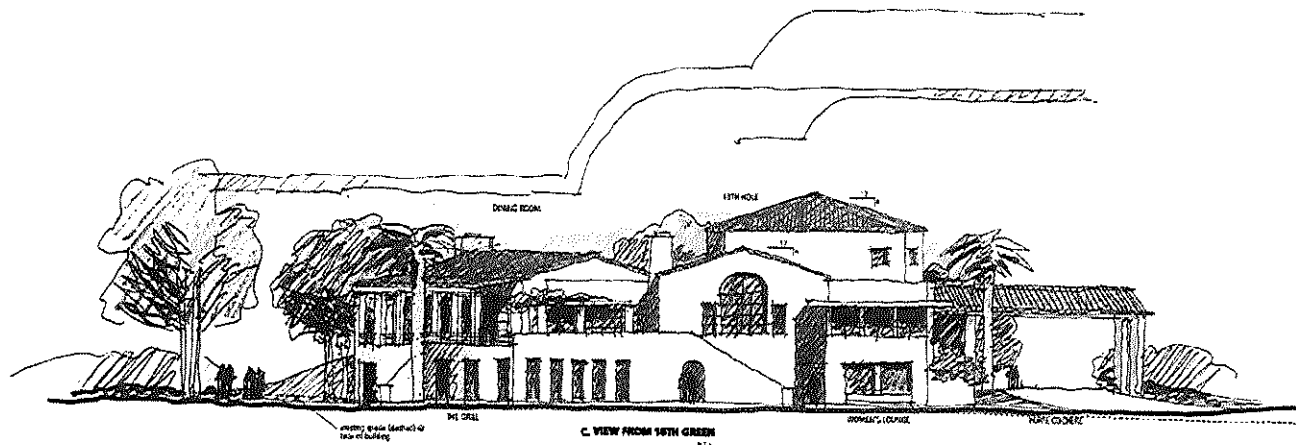
B. VIEW FROM GOLF COURSE



NBCC
Planned Community

stearns
ARCHITECTURE
200 Broadway Laguna Beach, CA 92651
949 376-7100 FAX 949 376-1568

EXHIBIT
5
3 OF 4

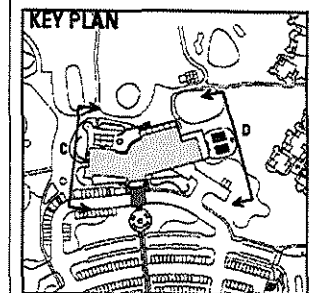


GOLF CLUBHOUSE

ELEVATIONS

MATERIALS

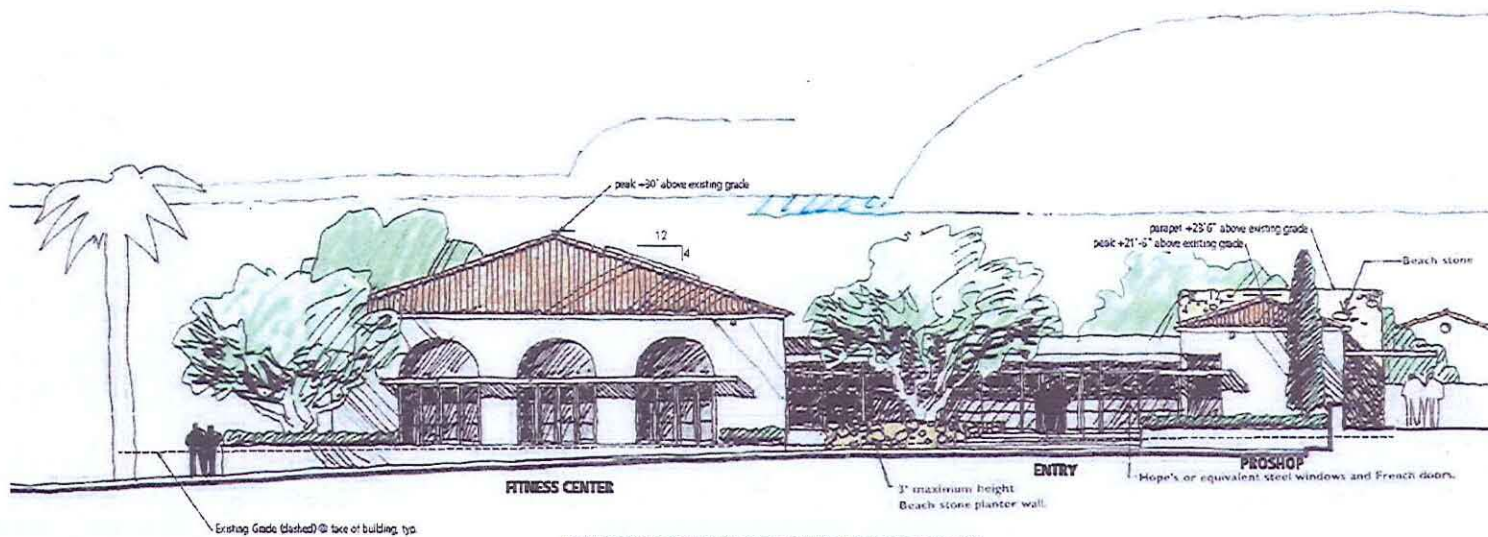
- smooth steel-troweled exterior plaster
- La Playa Beach stone
- Gladding, McBean clay roof tile blend #8 with Italian pans and Cordova covers
- Torrance steel window system



NBCC
Planned Community

STARS
ARCHITECTURE
500 Broadway Laguna Beach, CA 92651
949 376 7160 FAX 949 376 1500

EXHIBIT
5
4 OF 4



B. VIEW FROM NEWPORT CENTER DRIVE ENTRY
ats

TENNIS CLUBHOUSE & BUNGALOW SPA

ELEVATION

MATERIALS

- smooth steel-troweled exterior plaster
- La Playa Beach stone
- Gladding, McBean clay roof tile blend #8 with Italian pans and Cordova covers
- Torrance steel window system

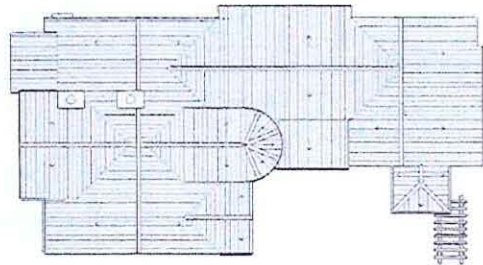


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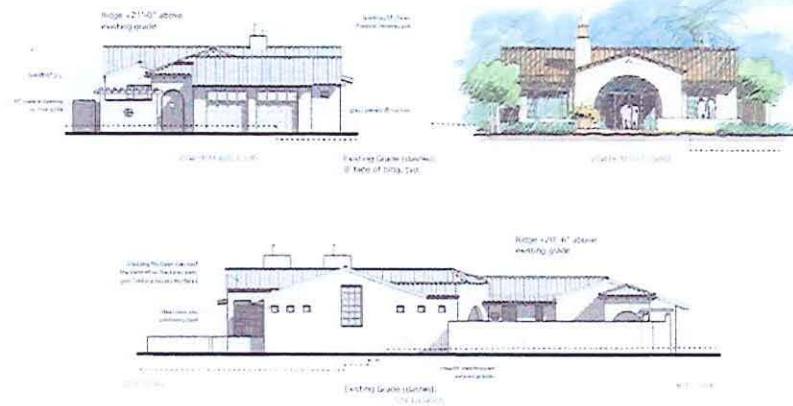
stearns
ARCHITECTURE
509 Broadway Laguna Beach, CA 92651
949 375 7160 FAX 949 375 1560

EXHIBIT
3
3 OF 3

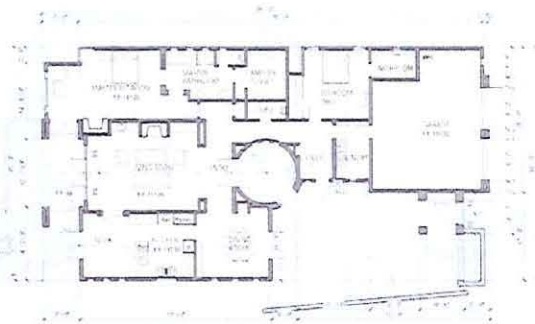




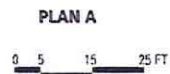
ROOF PLAN



CONCEPT ELEVATIONS



FLOOR PLAN



PLAN A

THE VILLAS FLOOR PLANS & ELEVATIONS

PLAN A
2201 ± square feet

MATERIALS

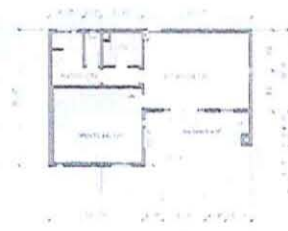
- smooth steel-troweled exterior plaster
- La Playa Beach stone
- Gladding, McBean clay roof tile blend #8 with Berkeley pans and Cordova covers



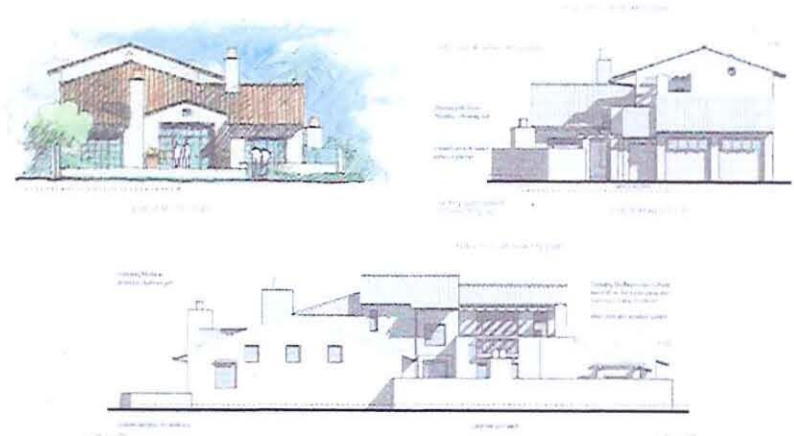
NBCC
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949.346.7160 FAX 949.346.7160

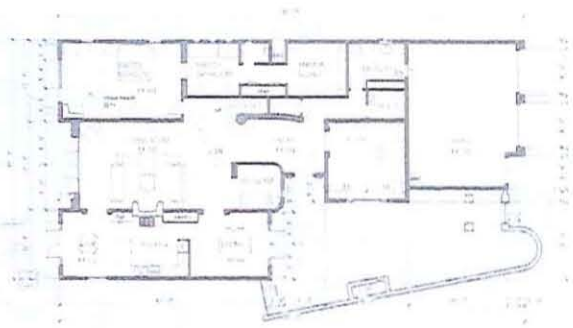
EXHIBIT
6
1 OF 5



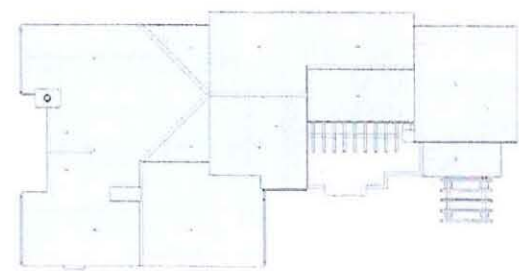
UPPER FLOOR PLAN



CONCEPT ELEVATIONS



LOWER FLOOR PLAN



PLAN B

ROOF PLAN

THE VILLAS

FLOOR PLANS & ELEVATIONS

PLAN B

3193 ± square feet

MATERIALS

- smooth steel-troweled exterior plaster
- La Playa Beach stone
- Gladding, McBean clay roof tile blend #8 with Berkeley pans and Cordova covers

KEY PLAN



NBCC

Planned Community

stearns
ARCHITECTURE
500 Broadway Square #400, LA 90014
949 376 7740 FAX 949 376 7740

EXHIBIT

6

2 OF 5



VIEW FROM POINT 1



VIEW FROM POINT 2



VIEW FROM POINT 3



VIEW FROM POINT 4

Attachment No. PC 3

Draft Planned Community
Development Plan

Newport Beach Country Club
Planned Community Development Plan

Date: November 17, 2011

Ordinance No. ____
Adopted _____

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 145 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private Golf Club, Tennis Club, 27 short-term rental units called the Bungalows with a spa/fitness area, and 5 semi-custom single-unit residential dwellings called the Villas.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director.

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical

engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. Screening of the Villas from Tennis Courts

Adequate buffering between the Villas and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

21. Screening of the Villas' Pool/Spa Equipment

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

22. Special Events

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. Trash Container Storage for Residential Dwellings-

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. Tennis Club Site Phasing Plan-

The phasing plan for the tennis club site which consists of the tennis club, villas and bungalows shall be subject to a site development review process.

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be 35,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area
- Separate Snack Bar

- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 Tennis Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

A. **The Tennis Courts**

1. Number of courts

The maximum allowable tennis courts shall be seven lighted tennis courts (six lighted championship courts and one lighted stadium-center court).

B. Tennis Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

2. Building Height

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet, and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Tennis Clubhouse and Courts shall be a minimum of 28 parking spaces.

3.3. The Villas

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the villas.

1. Number of Units

The maximum allowable number of single-family residential units shall be five (5).

2. Development Standards

The following development standards shall apply to the Villas:

The Villas Development Standards Table

Villa Designation	Villa A TTM Lot #1	Villa B TTM Lot #2	Villa C TTM Lot #3	Villa D TTM Lot #4	Villa E TTM Lot #5
Lot Size	5,000 square feet minimum				
Lot Coverage (Maximum)	70%	65%	55%	40%	55%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations				
Building Side Yard Setbacks	3 feet minimum				
Building Front and Rear Yard Setbacks	5 feet minimum				
Enclosed Parking Space for Each Unit	2	2	3	3	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed				

3.4. The Bungalows

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

1. Number of Units

The maximum allowable number of the Bungalows shall be 27 short-term guest rental units to be built in a clustered setting of single and two-story buildings.

2. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Concierge office and guest meeting facility
- Swimming pool and Jacuzzi
- Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items

3. Building Area

The maximum allowable gross floor area for the bungalows shall be 28,300 square feet with a 2,200 square foot concierge & guest center and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the bungalows shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The setback requirement shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the bungalows shall be a minimum of 34 parking spaces located in proximity to the use.

3.5 Signs

A. Sign Allowance

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing

distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, , tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

Attachment No. PC 4

Conversion of Tennis Courts
to Floor Area or Hotel Rooms
Memorandum

Memorandum

To: Planning Commission
From: James Campbell, Principal Planner 
Date: November 9, 2011
Re: Newport Beach Country Club – Golf Realty Fund Application
Conversion of Tennis Courts to Hotel Rooms
General Plan Consistency Determination

During the October 20, 2011, hearing on the project, the owner of the Marriott Hotel property, Host Hotels and Resorts (“Host”), proposed a “use conversion solution” as an alternative to the applicant’s request for a transfer of development intensity. The alternative approach is based upon the assumption that the eliminated tennis courts’ have a development intensity that can be converted to hotel rooms or building floor area. Host asserts that sufficient traffic capacity exists, that there is no limit to the number of hotel rooms in Statistical Area L1 (Newport Center), the conversion would not set a precedent, and there is no apparent constraint on conversion to a building (floor area). Although traffic is not an issue, staff does not believe the conversion of tennis courts to building floor area is consistent with the General Plan, the basis of staff’s conclusion is described below.

Traffic

The applicant’s proposed 27-room hotel generates fewer average daily trips and peak hour trips than the traffic trips attributable to the 17 tennis courts that would be eliminated¹. The net effect is an overall reduction of trips and the avoidance of any significant traffic impact². Staff concurs that the conversion of tennis courts to hotel rooms would not create a traffic impact and no mitigation would be necessary.

¹ Traffic and Parking Analysis for Newport Beach County Club, Clubhouse Improvement and Tennis Improvement project, Kimly-Horn and Associates, August 2009.

² Initial Study/Mitigated Negative Declaration for the Newport Beach County Club (PA2005-140), Keeton Kreitzer Consulting, September 2010.

Hotel Limit within Statistical Area L1 (Newport Center)

Host states that there is no overall General Plan limit to hotel rooms within Newport Center; however, staff believes that this assertion is only partially correct, because the construction of any new hotel rooms must be consistent with the overall non-residential development intensity established for Newport Center. There are two sites within Newport Center that have a specific allocation for hotel rooms; the Marriot Hotel property and the Island Hotel property. The MU-H3 land use category also provides an additional 65 rooms. Despite these specific allocations, other commercial sites within Newport Center are allowed to construct hotels provided the zoning or planned community development regulations permit hotels and the property has building floor area that is sufficient to accommodate the proposed hotel.

Precedent

The project site is within Anomaly Location #46, which specifically calls out a limit of 24 tennis courts and 3,725 square feet of building area. Staff believes the proposed conversion would set a precedent for other property since the conversion would create building floor area that is not provided in this Anomaly Location by the Land Use Element, as discussed further below.

No Constraint to Conversion of Tennis Courts to Floor Area

Staff disagrees with Host's assertion that there is no constraint to converting tennis courts to hotel rooms or building floor area. General Plan Land Use Element Policy LU4.1 establishes maximum development intensities³ through the Land Use Maps (Figures LU1 through LU15), specific land use categories (Table LU1), and the Anomaly Table (LU2). Development of the project must be consistent with the site's land use classification and may not exceed applicable development intensity limits.⁴ However, Policies LU4.3 and 6.14.3 allow for transfers of development intensity from one site to another within a Statistical Area provided the intent of the General Plan is maintained and there are no traffic impacts as a result. In the simplest terms, a recipient site may exceed its specified development intensity limit to the extent that the donor site is reduced to ensure that the total development intensity of the

³ Development intensity identified by Policy LU4.1 are maximum limits for development and cannot be considered an "entitlement" until a vested right is conveyed either through a Development Agreement or entitlement approval and construction. Development is subject to other applicable policies of the General Plan and Municipal Code as well as other applicable government regulations.

⁴ LU4.1 establishes maximum non-residential development intensities in five (5) ways; 1) floor area, 2) floor area ratios, 3) hotel rooms, 4) theater seats, and 5) tennis courts.

larger Statistical Area is not exceeded. Statistical Area L1 represents Newport Center and includes the project site.

The Tennis Club portion of the project site is classified "MU-H3/PR" by the Land Use Maps. The dual classification allows uses and development limits specified by both the MU-H3 and PR classifications. The MU-H3 classification allows for the horizontal intermixing of regional commercial office, hotel, multi-family residential and ancillary commercial uses. Within the project site, residential uses may be developed as single family units, but must be allocated to the Anomaly Location through the approval of a Site Development Plan or Development Agreement. A maximum of 65 hotel rooms and 450 residential units are allocated to the various properties designated MU-H3 within Newport Center in addition to those development intensities specified in Table LU2⁵. The PR designation applies to land used or proposed for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. There is no applicable maximum density or intensity limit of for public uses. Private uses in this category may include incidental buildings, such as maintenance equipment sheds, supply storage, and restrooms, not included in determining intensity limits. For golf courses, these uses may also include support facilities for grounds maintenance employees. "Other types of buildings and developments are limited as specified in Table LU2."

Table LU2 establishes two maximum development limits for the project site (Anomaly Location #46):

- 1) 3,725 gross floor area (GFA) and
- 2) 24 tennis courts.

These development limits reflect the existing "built" condition of the Newport Beach Tennis Club.

Conclusion

In summary, staff believes the proposal to convert eliminated tennis courts to hotel rooms or building floor area does not create a traffic impact; however the proposed conversion does

⁵ The 65 hotel rooms and 430 residential units were entitled to the Irvine Company with the adoption of Development Agreement No. DA2007-002 and allocated within the North Newport Planned Community, and therefore, zero hotel rooms and 20 residential units remain for entitlement to any property classified MU-H3.

increase development intensity above the limit established by the General Plan for Anomaly Location #46. The proposed 3,725 GFA tennis clubhouse is expressly allowed in Table LU2 and the proposed 5-single family homes are expressly allowed by the MU-H3 land use category provided in Table LU-1 of the General Plan. The General Plan allows the proposed transfer of 27 hotel rooms through approval of a transfer of development intensity, and the applicant has duly filed such an application

Staff believes that the only other appropriate alternative to allow the 27 hotel rooms to be constructed in Anomaly Location #46 is through the review and approval of a General Plan Amendment.

Attachment No. PC 5

Comparison Site Plans



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Golf Realty Fund
One Upper Newport Plaza
Newport Beach, California 92660

Attn. **Robert O Hill / ROH@GolfRealtyFund.com**

Regarding: **Newport Beach Country Club**
Newport Beach, California

From **Leland Stearns**

Leland N Stearns

PROJECT DESCRIPTION

Attached is a revised Master Plan Compromise 9 and 10 responsive to Lee & Sakahara's comment letter dated November 2, 2011.

In my professional opinion, 1) Master Plan Compromise 9 and 10 show that the IBC Golf Clubhouse and the GRF Golf Parking Lot Design can easily work together with IBC's cooperation and 2) GRF's Golf Parking Lot design shown on Master Plan Compromise 9 and 10 is a much better aesthetic and pedestrian solution than IBC's golf parking lot.

Below is a detailed response to Lee & Sakahara's letter with their comments shown first in black followed by my responses in blue italics.

- Plan indicates 334 parking spaces but actual count is 327 plus 5 spaces in the Maintenance Yard total count = 332 spaces

Please see the attached Master Plan Compromise 9 and 10 where an additional 7 parking spaces have been added and 5 spaces in maintenance yard eliminated for a total of 334. (Parking Required is 244 spaces) If the GRF Golf Parking Lot design is adopted GRF has agreed to make available to IBC the non-exclusive parking easement over Corporate Plaza West for weekends and holidays for an additional 554 additional parking spaces.

- Plan does not address existing access easement. If easement is maintained, this will further reduce parking spaces.

The Frontage Road Easement has been terminated. Planning Commission at their hearing indicated that they unanimously desire a Master Plan without the hazardous and unsightly Frontage Road. If Frontage Road remains the primary loss will be to the significant landscape buffer along PCH and traffic safety.

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- Plan does not allow semi-trucks to maneuver in the parking lot. No staging areas for major events.

Please see the LSA Study and Stearns Architecture prior Major Tournament Staging Plan demonstrating that trucks can maneuver in the parking lot and staging areas for major events can be accommodated.

- Plan reduces the upper level prime parking by 32 spaces.

The IBC plan has approximately 80 cars in the upper level parking area. The GRF has 57 cars in the upper level parking area. The GRF plan makes all the parking better and does not have the significant grade difference between prime golf parking and secondary parking shown in the IBC plan requiring stairways with an extensive number of steps from the very large secondary parking area. Master Plan Compromise 9 and 10 has 2 additional parking stalls adjacent to the Golf Clubhouse.

- Plan provides only one sidewalk in the parking lot. Travel distance to the sidewalk at the east parking lot is approximately 290' and approximately 230' at the west parking lot. This layout will encourage members to "cut through" the landscaped islands and between cars (shortest path to the front door).

Two more pedestrian sidewalks have been added in attached Compromise 9 and 10. The Master Plan Compromise 9 and 10 is more pedestrian and golf cart friendly. (See the LSA Study)

- The primary access to parking from the Porte Cochere is offset requiring two turns to access parking lot.

With both the GRF and the IBC plans there are two turns. With Master Plan Compromise 9 and 10 there are two turns when leaving the Porte Cochere and going to the parking area. With the IBC's schematic plan there are two turns when leaving the parking area and returning to the Porte Cochere.

- Plan encroaches 10'-20' into the golf course at the 18th green area.

Please see the revised Master Plan Compromise 9 and 10 which eliminates encroachment.

- Plan encroaches into Maintenance Yard.

Please see Master Plan Compromise 9 and 10, which eliminates this very minor encroachment.

- 5 spaces in the Maintenance yard should be deleted. This space is allocated for golf course maintenance bins.

See attached Master Plan Compromise 9 and 10 where the 5 spaces in the Maintenance Yard have been deleted.



- Due to the terraced parking concept, taller plant material will be required to effectively conceal the automobiles. See attached section.

With the terraced design the goal is not to conceal the cars but to mitigate the "Sea of Asphalt" and to create a far more aesthetic environment and public view from PCH. Much of the time the parking lot is mostly empty.

- Plan indicates reduced service yard.

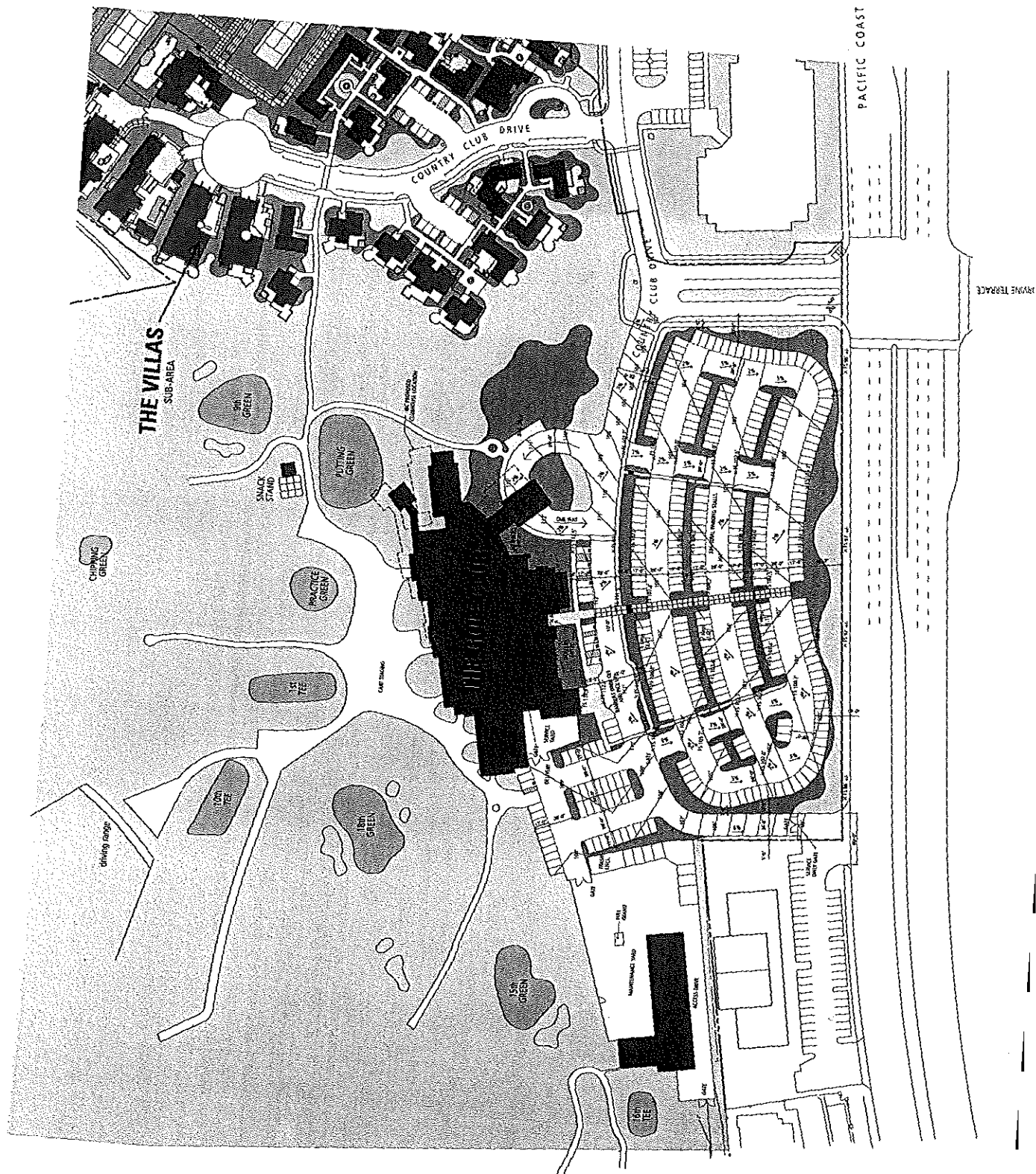
Please see the attached Master Plan Compromise 9 and 10 with no reduction to Maintenance Yard area.

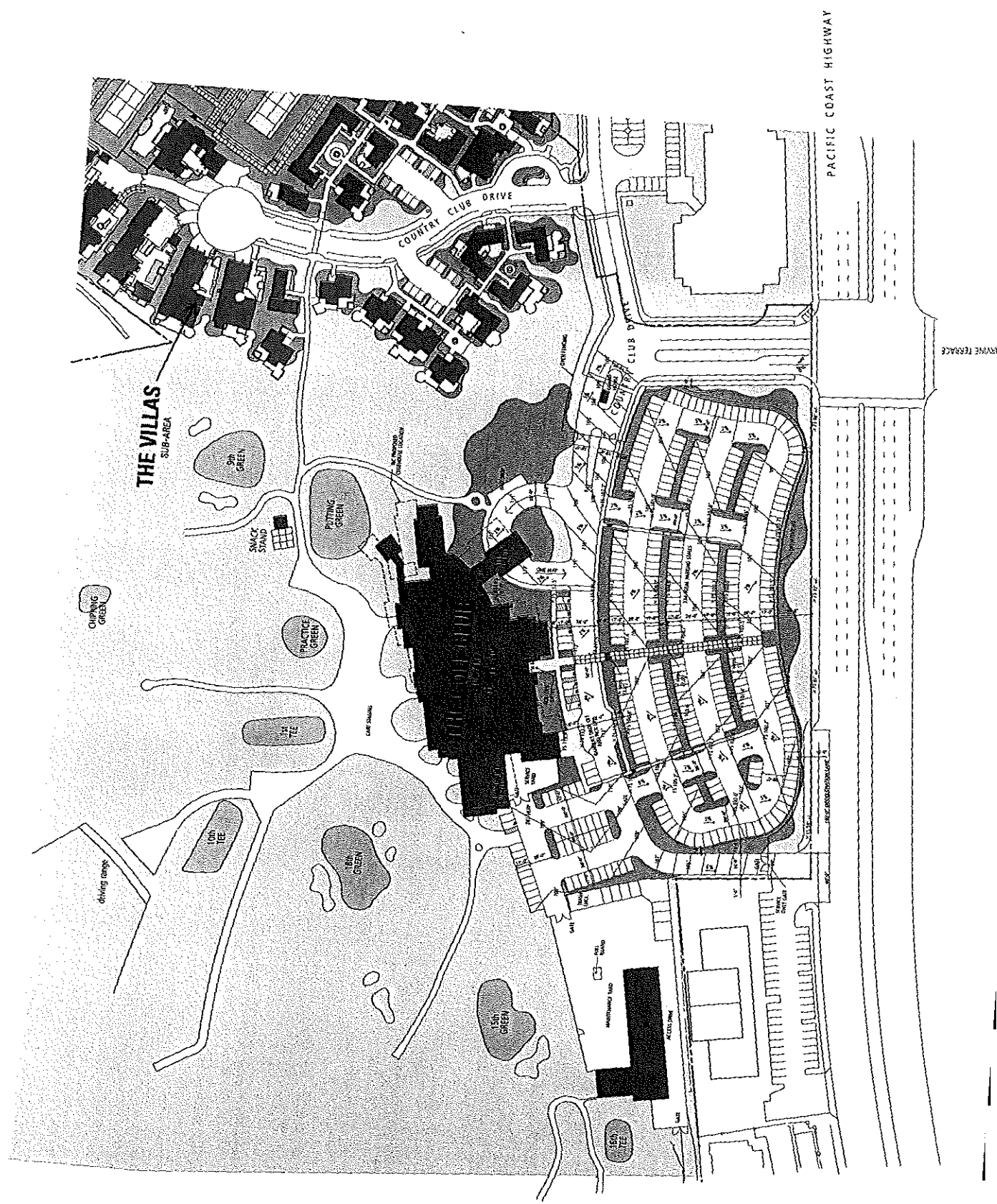
- Plan indicates an 85' driveway along Coast Highway between NBCC and the Nursery. City may have some issues.

Please see Master Plan Compromise 9 and 10, which eliminates the 85' driveway and is now identical to IBC's Preliminary Site Plan.

- Orientation of the Clubhouse has changed.

The Clubhouse has been very slightly rotated. See the dashed line on the attached GRF Master Plan Compromise 9 and 10.





Correspondence

Item No. 2a

Newport Beach Country Club

PA2005-140

LATHAM & WATKINS LLP

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November 7, 2011

Newport Beach Planning Commissioners
Newport Beach Planning Commission
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

Re: Proposed Transfer of Development Rights from Newport Beach Marriott Hotel
(Anomaly 43) to Newport Beach Country Club (Anomaly 46);
Project File No. PA2005-140

Dear Commissioners:

Pursuant to your direction at the October 20, 2011 Planning Commission meeting, we met on October 28 with Planning Director Kim Brandt, Assistant City Attorney Leonie Mulvihill, Principal Planner James Campbell, and the applicant's attorney, Tim Paone, to further discuss a potential use conversion. Your staff was very generous with its time, and has been a pleasure to work with.

We believe we have reached a solution that provides significant benefits to the City, allows the Tennis Club project to move forward as planned, and preserves the development rights for 27 hotel units at Anomaly 43. We have taken the step of preparing an analysis of the Use Conversion methodology to demonstrate that the Use Conversion is consistent with the General Plan and Zoning Code, and to provide the Planning Commission, staff, and the applicant the opportunity to consider the Use Conversion at the hearing. Although staff has expressed some skepticism, we have heard no objections that, in our view, would place a Use Conversion outside of the discretion of the Planning Commission to recommend, or outside of the discretion of the City Council to adopt. An Alternative Report for your consideration is attached hereto as Exhibit A, and explains why a use conversion is legal and is good policy.

Additionally, as we said at the October 20 hearing, we believe the Use Conversion is the fairest outcome given HHR Newport Beach LLC ("Host")'s substantial interest in the 611 hotel units assigned to Anomaly 43 (of which the project applicant proposes to use 27 to support its project). To underscore the fairness of our proposed solution, and our standing to suggest such a solution, we have enclosed as Exhibit B hereto a brief outline of the relevant history for these 611 units.

LATHAM & WATKINS^{LLP}

We are submitting these materials today for your review and assessment, and so they may be included in the packet for the Planning Commission meeting on November 17, 2011. We look forward to the meeting and answering any questions you may have. In the meantime, we will continue to work with staff and the applicant with the goal of securing consensus on a use conversion. Please do not hesitate to contact me at (714) 755-8168 to discuss these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paul N. Singarella', written over the closing 'Very truly yours,'.

Paul N. Singarella
of LATHAM & WATKINS LLP

cc: Ms. Kim Brandt
Ms. Leone Mulvihill, Esq.
Ms. Carol McDermott

**EXHIBITS A AND B TO NOVEMBER 7, 2011
LATHAM & WATKINS LLP LETTER RE:**

**Proposed Transfer of Development Rights from Newport Beach
Marriott Hotel (Anomaly 43) to Newport Beach Country Club
(Anomaly 46); Project File No. PA2005-140**

TAB A

Conversion of Use

Alternative Report and Findings

Project Setting:

The subject property is approximately 143 acres in size and currently improved with a private golf course (Newport Beach Country Club) and a private tennis club (former Balboa Bay Racquet Club). The subject property is generally bordered by East Coast Highway to the south, Jamboree Road to the west, Santa Barbara Drive and Newport Center to the north, and Corporate Plaza West to the east and south. The tennis club (Tennis Club site) is located at the southeast corner of the subject property while the golf course (Golf Club site) occupies the remaining westerly side of the property. The Tennis Club site is presently improved with 24 tennis courts, a 3,725 square-foot tennis clubhouse and 125 surface parking spaces.

The Golf Club site is presently improved with a 6,587-yard, 18-hole golf course and related practice facilities, a 23,469 square-foot clubhouse, a 6,050 square-foot golf cart storage barn, a 2,010 square-foot greens keeper building, and 420 surface parking spaces. Main vehicular access to the subject property is from a private drive way (Country Club Drive) that connects to East Coast Highway at Irvine Terrace Drive, a signalized intersection. A secondary access is provided from Newport Center Drive via Farallon Drive.

Project Description:

Golf Realty Fund, the land owner, proposes a Planned Community Development Plan (PCDP) for the redevelopment of the existing private golf course clubhouse, parking lot, and tennis club. Additionally, the PCDP provides for the conversion of 17 tennis courts at the Tennis Club site to five (5) single-unit residential dwellings "Villas" (which are part of the Project, but which are not part of the conversion analysis) and 27 short-term lodging units "Bungalows."

Background:

Golf Realty Fund previously identified a Transfer of Development Rights (TDR) as a means of converting the tennis court area into the 27 short-term lodging units. Host Hotels and Resorts, the owner of the transferor site, has indicated that it opposes the transfer and intends to put to use through a consensual transfer, or its own development, the 27 hotel units that would be the subject of the TDR proposed by the applicant. At the October 20, 2011 Planning Commission hearing, the Planning Commission directed staff, Host Hotels and Resorts, and the applicant to review a Conversion of Use alternative for implementing the Project that is consistent with the General Plan and Zoning Code. It has been determined that a use conversion is consistent with the General Plan and Zoning Code.

Accordingly, the Project can be modified to remove the TDR approach and substitute in its place a Conversion of Use methodology which achieves the same result as the previously proposed TDR. Either the TDR or the Conversion of Use process achieves the same results, but the latter methodology results in additional benefits to the City discussed in the findings below. Both

strategies are in compliance with the City's General Plan and Zoning Code. This report reviews the Conversion of Use approach upon which the approval can be based.

Conversion of Use:

The TDR methodology in the City of Newport Beach Zoning Code Chapter 20.46 (New Code) includes the Conversion of Use of non-residential development intensity: "If the requested transfer includes the conversion of non-residential uses, the application shall also identify the quantity of entitlement, by use category, before and after the transfer (Newport Beach Zoning Code 20.46.040)."

The TDR or Conversion process was created to ensure that development intensity was consistent with transportation infrastructure capacity in a given area. The General Plan acknowledges this concept within the Newport Center area at General Plan Policy LU6.14.3 - Transfers of Development Rights:

"Development rights may be transferred within Newport Center, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts."

Therefore, Transfer or Conversion of development rights must be traffic neutral and follow the Zoning Code procedures in chapter 20.46. In this case, a TDR is not needed because there are enough existing traffic trips and intensity already on the site such that a Conversion of Use may occur.

Methodology and Analysis:

The proposed Project has been grandfathered under an earlier version of the Zoning Code. However, the Zoning Code—both the previous version and the current version—allows Planned Community Development Plans to conflict with and take precedence over the Zoning Code.

As such, the Planned Community Development Plan can be amended to include provisions that parallel section 20.46.040 of the current Zoning Code discussed below. This will allow the conversion to be governed by a standard that meets the intent of the General Plan and Zoning Code and assures that conversion does not generate traffic or intensity that would have potential negative environmental impacts.

The project proposes to convert 17 tennis courts to a hotel type use. As noted in Zoning Code Section 20.46.020, conversion of use is permissible within all zones of the City as long as the findings in the Zoning Code can be made. Use conversion procedures are found in Zoning Code Section 20.46.040, and require the Planning Department to conduct a traffic analysis and intensity analysis to ensure that the project does not impact the local transportation network.

Traffic Analysis:

The tables below illustrate the traffic trip generation rates for the existing and proposed uses. Note that the trip generation rate for a golf course is based on the number of golf holes (18) and the rate for a tennis club is based on number of courts (24). Tennis clubs are a high traffic generator based upon ITE Trip rates; the loss of 17 courts gives the project a reduction of daily trips and AM/PM peak hour trips. Inclusive of the hotel units, there is a net reduction of 389 daily trips for the entire development. Therefore the conversion of 17 tennis courts to 27 hotel units is trip neutral and will not result in a net negative impact on the overall circulation system in the immediate area given the overall reduction in daily trips.

Trip Generation Rates

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	Holes	2.22	2.74	35.75
Tennis Club	ITE	Court	1.31	3.35	28.7
Hotel	ITE	Room	0.56	0.59	8.17
SFR	ITE	DU	0.75	1.01	9.57

Existing Use

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	18 Holes	40	49	643
Tennis Club	ITE	24 Courts	31	80	929
Total			71	130	1572

Proposed Use

Land Use	Rate Type	Size/Unit	AM Peak Hour (Total)	PM Peak Hour (Total)	Daily (Total)
Golf Course	ITE	18 Holes	40	49	643
Tennis Club	ITE	7 Courts	9	23	271
Hotel	ITE	27 Room	15	16	221
SFR	ITE	5 DUs	4	5	48
Total			68	94	1183

Intensity Analysis:

Zoning Code Section 20.46.040(D) states that, "if the transfer request involves the conversion of uses, the Director shall perform a land use intensity analysis to determine the floor area that could be developed with and without the transfer. For purposes of this analysis, theater use shall be allocated fifteen (15) square feet per seat. Hotel use shall be allocated the number of square feet per room at which it is included in the General Plan. When the General Plan does not specify intensity for hotel rooms, it shall be as determined by the Director."

The Project includes the conversion of 17 existing tennis courts with an average floor area of 2808 square feet to 27 hotel units. Regulation tennis court dimensions are 78' x 36'. To remain conservative in the analysis, the square footage number used is only inclusive of the court

dimensions and does not include edge area and areas for observation within the fenced tennis court area.

The proposed Project is located in General Plan Anomaly 46. General Plan Table LU2 designates Anomaly 46 with 3,725 square feet and 24 tennis courts. Table LU2 does not assign numerical square footage intensity to the tennis courts and allows ancillary uses without designation of square footage. Therefore, the square footage associated with the tennis courts was determined as described above. The tennis club is also located within the PC – Planned Community zone which allows for flexible development standards to achieve a superior project. As noted in Zoning Code Section 20.46.040(D), when the General Plan does not specify an intensity for certain uses, that intensity may be determined by the Planning Director. As such, the PCDP text can be amended to specify what is implicit in the General Plan: that the tennis courts have intensity equal to their area, which is at least 2808 square feet per court.

Similarly, Table LU2 does not assign a square footage value to hotel units. As noted in Zoning Code Section 20.46.40(D) the hotel room intensity may be specified by the Planning Director if not specified in the General Plan. In this analysis an intensity of approximately 1,045¹ square feet has been assigned to the hotel units.

The Tennis Club Site (Tennis Clubhouse & Courts, Bungalows & Villas)

Existing Improvements		Proposed New Improvements	
Component	Floor Area (sq. ft.)	Component	Floor Area (sq. ft.)
Clubhouse	3,725	Clubhouse	3,725
24 Tennis Courts	67,392 ²	7 Tennis Courts ³	19,956
		27 Bungalows	28,219
		Bungalow Spa	7,490 ²
		Concierge & Guest Meeting Facility	2,170 ²
		5 SFR	N/A
Total sq. ft	71,117		61,560

As shown in the table above, the proposed Project will reduce the existing floor area of the Tennis Club facility by approximately 10,000 square feet. The Project is therefore consistent with the development intensity of the site.

¹ The Planning Director previously designated each Bungalow unit with 1045 square feet of intensity in the August 4, 2011 Planning Commission Staff Report.

² 2808 sf / court

³ 17 of 24 courts will be demolished; and one new stadium court will be constructed.

Green Light Analysis:

Charter Section 423 also known as “Greenlight” requires that any major amendment to the General Plan be put before voters. Conversion of Use and TDR already are established within the General Plan and the Project does not require a General Plan amendment. Therefore Greenlight does not apply to either TDR or Use Conversion methodology used to achieve the proposed Project.

The spirit and intent of Greenlight is to carefully consider major changes in traffic, density or intensity caused by development. Significant increases in traffic, density, and intensity in Greenlight are defined as “100 peak hour trips (traffic), or over 100 dwelling units (density), or over 40,000 square feet of floor area (intensity).”⁴ As shown in the analysis above, the proposed Project will be trip neutral, only adds 27 bungalow units, and proposes no increase in the intensity on site. The Project not only is exempt from Greenlight, it falls below the thresholds which require review under the spirit of Greenlight.

Findings:

Zoning Code Section 20.46.050 provides that the Planning Commission and City Council make certain findings to allow the conversion of use. As stated above, this standard can be incorporated into the PCDP text. The findings can be made and are evaluated below on the following basis:

A. The reduced density/intensity on the donor site provides benefits to the City, for example:

- 1. The provision of extraordinary open space, public view corridor(s), increased parking, or other amenities;**
- 2. Preservation of an historic building or property, or natural resources;**
- 3. Improvement of the area’s scale and development character;**
- 4. Reduction of local vehicle trips and traffic congestion; and**
- 5. More efficient use of land.**

The conversion of use reduces the overall number of trips being generated at the Project site, creating a reduction in projected traffic congestion. In addition, the conversion of use will preserve visitor serving units in the Coastal Zone, which is considered a public benefit by the City as well as the California Coastal Commission. The conversion preserves development intensity in the L-1 statistical area providing future significant benefits to the City through additional transient occupancy tax revenue, and additional economic activity created by that anticipated intensity. The future new revenue can be used to support core city services like police, fire, parks and recreation, and library services which provides benefit throughout the City. The Tennis Club facility also represents an in-fill development site. By constructing hotel units on an already developed area, the project will preserve natural resource areas that otherwise

⁴ Charter Section 423

may be developed with hotel units. Finally, the floor area used for the hotel units is less than that of the current tennis court facility representing a more efficient use of land.

B. The transfer of development rights will not result in any adverse traffic impacts and would not result in greater intensity than development allowed without the transfer and the proposed uses and physical improvements would not lend themselves to conversion to higher traffic generating uses;

As shown in the analysis above, the conversion of use will not result in any adverse traffic impacts, because peak hour trips and total trip generation will be less than the existing use. In addition, the 24-court tennis facility including ancillary uses amounts to intensity than the proposed project and therefore the conversion represents a reduction in intensity from the existing uses.

C. The increased development potential transferred to the receiver site will be compatible and in scale with surrounding development and will not create abrupt changes in scale or character;

The proposed Project will maintain the tennis court use on site and add hotel and single-family units that are compatible with adjacent uses. The site currently supports single-family residential units adjacent to the golf course, while several different properties in the Newport Center include hotel units. The Project proposes single-story bungalow style hotel units which will be compatible with the architectural style of adjacent residences. Therefore, the Project will be compatible in scale with the surrounding development and will not create an abrupt change in scale or character.

D. The receiver site is physically suitable for the development proposed taking into consideration adjacent circulation patterns, protection of significant public views and open space, and site characteristics, including any slopes, submerged areas, and sensitive resources. (Ord. 2010-21 § 1 (Exh. A)(part), 2010)

The proposed conversion is physically suited to the site, because it will provide a more compact footprint for the facility, creating a more economical use of the land. The reduction in traffic trips generated by the proposed Project will not change or interfere with existing circulation patterns. The project proposes low rise development which will not impact any public views or site characteristics. The Project is an infill development site, and therefore sensitive resources are not present.

TAB B



Brief history of Newport Beach Marriott site

This document briefly describes the entitlement history of the Newport Beach Marriott ("Marriott") site, which is owned by HHR Newport Beach LLC ("Host"). The City of Newport Beach's ("City") General Plan designates 611 hotel units for Anomaly 43, which is the Marriott site. The site is currently developed with 532 hotel units, leaving a balance of 79 units.

The City previously has affirmed that 611 rooms can be built at the hotel site.

The City originally amended its General Plan to allow 611 hotel units at the Marriott site in 1983. Since that time it has affirmed that 611 units can be built at the site, and also that, if not used on site, the hotel may transfer them with the City's consent. Relevant history includes:

- Santa Barbara Condominiums project. On January, 10, 2006, the City Council approved the Santa Barbara Condominiums project. The project included subdividing the Marriott site into two parcels and amending the General Plan to allow 79 residential units on the smaller, 4.25-acre parcel, adjacent to the preexisting hotel.
 - The staff report specifically states that the hotel may construct the 79 units on site or transfer them to another site with the City's consent. "The proposed residential project would add an additional 79 units to the Block 900 – Hotel Plaza area, an increase from 67 to 146 units. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms on the adjacent site, or potentially transfer the entitlement of the remaining rooms (with City approval) within the Newport Center area." (Emphasis added.) (Exhibit 1.)
 - The project's CEQA review similarly allows Host to develop the 79 units on site or transfer them. The mitigated negative declaration prepared for the Santa Barbara Condominiums project similarly indicates that Host may develop or transfer the 79 unbuilt hotel units: "The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms in the future on the adjacent hotel site, or potentially transfer the entitlement of the remaining 79 rooms (with City approval) within the Newport Center area." (Exhibit 2.)
 - The Planning Commission minutes also reflect that the 79 units would remain on the hotel site. "Chairperson Toerge asked if the new condominiums would absorb any of the 79 unused hotel room allocation. He was answered no." (Exhibit 3.)
 - Resolution 2006-2 approving the project specifically finds that the entitlement for the 79 undeveloped hotel units was not reduced. "Although the change in land use designation will reduce the land available for visitor serving commercial uses by 4.25 acres; the opportunity to construct remaining hotel room entitlement of 79 rooms would not be lost and they could be constructed nearby within the portion of the Newport Center that is located within the Coastal Zone." (Exhibit 4.)

- \$10,000,000 in mitigation to be paid for the 79 new units. As part of the creation of 79 new residential units, the property owner is required to pay \$10 MM in mitigation--\$5 MM as a condition of the Coastal Commission approval and \$5 MM as a condition of the City's approval. (Exhibit 5 [California Coastal Commission Resolution on City of Newport Beach Local Coastal Program Amendment 1-06] at p. 6; Exhibit 6 [July 24, 2007 City Council staff report].)
- 2006 General Plan adoption. The City adopted the new General Plan in 2006. This was ratified by a November 7, 2007 vote of the people.
 - The General Plan specifically designates the Marriott for 611 hotel units. The Newport Beach Marriott is located in Anomaly 43 of the L1 statistical area of the City's General Plan. Table LU-2 of the General Plan Land Use Element designates a development intensity of 611 hotel rooms for Anomaly 43. (Exhibit 7.)
 - Figure LU-13 further suggests that Anomaly 43 corresponds to Host's real property (the Marriott site). (Exhibit 8.)
- In the May 11, 2004 substantial conformance review, the City reiterated that the site is authorized to build 611 hotel rooms. In 2004, the Marriott Hotel operated 586 hotel rooms. It sought City approval to consolidate some of the rooms into larger suites and into other amenities and facilities, bringing the total number of rooms down to 532.
 - The City Planning Director found that the hotel has a right to build 611 total rooms. In the staff report for the substantial conformance review, the Planning Director specifically found that the hotel is authorized to build 611 hotel rooms: "The hotel is currently authorized 611 hotel rooms and currently operates 586." (Exhibit 9.)
- The previous General Plan clearly indicated that a total of 611 hotel rooms can be built at the site. Previous versions of the General Plan also clearly stated that a total of 611 hotel rooms can be built at the site. For example, in 1995, the Land Use Element stated that Block 900 – Hotel Plaza was "designated for Administrative, professional, and Financial Commercial and Multi-Family Residential land uses. The allowed development is 611 hotel rooms with ancillary hotel support facilities and 16,630 sq.ft. of office development. The residential site is allocated 67 dwelling units." (Exhibit 10.)

The Coastal Commission relied on the understanding that 611 hotel units can be built at the Marriott site.

The Santa Barbara Condominiums project required an amendment to the City's Land Use Plan, to change the designation of 4.25 acres from Visitor-Serving Commercial to Medium Density Residential. The Coastal Commission was concerned that changing the designation of the 4.25 acres (the smaller portion of the subdivided Marriott site) would reduce the availability of visitor-serving coastal uses. It relied on the City's approvals to conclude that the project would not result in the Marriott site losing any of the remaining 79 units.

- "In order for the proposed land use conversion from Visitor-Service Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal development permit (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently according to the applicant, there are 532 rooms with a 75% occupancy.)" (Emphasis added.) (Exhibit 11 [California Coastal Commission Resolution on City of Newport Beach Local Coastal Program Amendment 1-06].)

The Marriott has fully mitigated traffic impacts for the hotel rooms.

The City prepared a full environmental impact report when it amended the General Plan in 1983 to approve the site for 611 hotel units. As part of the environmental review and project approval, the Marriott was required to implement extensive mitigation. This environmental impact report required Marriott to mitigate for the traffic impacts of the entire 611 hotel rooms.

- The EIR analyzes and imposes mitigation on trips for buildout of the entire 611 hotel rooms.

TABLE E

64

TRAFFIC GENERATION

lsa

Period	Trip Generation Rate ¹	Estimated Trip Ends ²
Daily	12.0	2,800
P.M. peak hour		
Incoming	0.5	120
Outgoing	0.3	70
2.5 peak-hour period		
Incoming	1.0	240
Outgoing	0.6	140

Source: Weston Pringle & Associates, July 1982.

¹Trip ends per room.

²Based upon 234 guestrooms.

Full expansion was taken into account in analysis and therefore mitigated for.

(Excerpt from EIR; see Exhibit 13 for full EIR traffic study.) The 234 units represents the increase in units from 377 to 611 units that was entitled in 1983.

- The Planning Director's supplemental staff report indicates the hotel was required to pay \$603,800 for traffic and noise mitigation. "It is recommended that the City Council's approval of this project require the deposit of \$361,800.00, noise wall, traffic signal and the additional circulation system improvement funds, prior to the issuance of any grading or building permits, and the remaining \$242,000.00 TPO circulation system improvements, be deposited prior to occupancy of any portion of the project's facilities, other than those designed for parking." (Exhibit 12.)

EXHIBIT 1

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 28
December 13, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

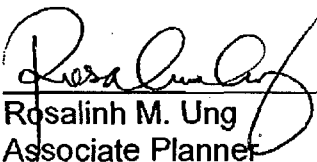
FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

The applicant is requesting the proposed residential project deliberation be continued to the January 10, 2006 City Council meeting. The request was necessary in order for the applicant to finalize their discussions with the Newport Beach Country Club regarding the interface between the golf course and the proposed residential project.

Prepared by:


Rosalinh M. Ung
Associate Planner

Submitted by:


Patricia L. Temple
Planning Director

Attachment: Applicant's Letter

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 28
December 13, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us


SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

On November 22, 2005, the applicant requested a continuance to December 13, 2005. The request was necessary in order for the applicant to finalize their discussions with the Newport Beach Country Club regarding the interface between the golf course and the proposed residential project.

As of December 2, 2005, Lennar Homes and the Newport Beach Country Club have had several meetings. While these meetings have been productive, they have not reached a conclusion as of yet. The applicant, however, is expecting to have a resolution to present to the City Council at the meeting.

Prepared by:



Rosalinh M. Ung
Associate Planner

Submitted by:



Patricia L. Temple
Planning Director

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

COUNCIL AGENDA

NO. 28

12-13-05

Agenda Item No. 13

November 22, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: Santa Barbara Condominiums
900 Newport Center Drive
(PA2004-169)

APPLICANT: Lennar Homes

ISSUE

Should the City Council adopt a Mitigated Negative Declaration and approve the applications listed below to allow the development of 79 condominiums on a 4.25 acre site presently developed with an outdoor tennis complex operated by the Newport Beach Marriott Hotel?

RECOMMENDATION

Staff recommends that the City Council hold a public hearing and approve the request by adopting Resolution No. 2005-____ for General Plan Amendment No. 2004-005, LCP Land Use Plan Amendment No. 2005-001, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004(16774), Traffic Study No. 2005-002, Coastal Residential Development Permit No. 2005-004 and Mitigated Negative Declaration (SCH No. 2005-071067) and introducing Ordinance No. 2005-____ for Planned Community Development Plan No. 2005-003, and passing the ordinance to a second reading for adoption on December 13, 2005.

DISCUSSION

On November 3, 2005, the Planning Commission voted 6 ayes (one recused) to recommend approval of the proposed project to the City Council. The project involves the following discretionary applications for the City Council to consider:

- General Plan Amendment - Change the land use designation of the 4.25-acre site from Administrative, Professional, & Financial Commercial to Multiple-Family Residential.
- LCP Land Use Plan Amendment - Change the land use designation of the 4.25-acre site from Administrative, Professional, Financial Commercial to Multiple-Family Residential (1990 LCPLUP) or from Visitor-Serving Commercial to Medium Density Residential (2004 LCP).

- Planned Community Development Plan Text Adoption and Waiver of Minimum Acreage - Rezone the subject property from APF to the PC District; adopt a Planned Community Development Plan to establish use and development regulations; and consider a waiver of the 10-acre minimum land area requirement for Planned Community District adoption.
- Subdivision - Tentative Parcel Map to subdivide the 4.25-acre property from the 13.79-acre Marriott Hotel development. Tentative Tract Map to subdivide the 4.25-acre property for condominium ownership.
- Traffic Study – Traffic analysis pursuant to the Traffic Phasing Ordinance (TPO).
- Coastal Residential Development Permit – For the construction of 10 or more new dwelling units within the Coastal Zone.

The project consists of 79 residential condominium units with eight different floor plan options, ranging from 2,363 to 4,018 square feet in size. Access to the new residential development will be via two driveways from Santa Barbara Drive. The project is designed with two subterranean parking levels, and 201 parking spaces for residents and guests. The minimum building front, side, and rear setbacks proposed for the development are 15, 7 and 13 feet respectively.

Land Use Element

The current designation is Administrative, Professional, & Financial Commercial and the residential condominium project is consistent with the proposed Multi-Family Residential land use designation. The two percent (2%) reduction in APF designation in Newport Center proposed by the project is not a significant loss of opportunity for commercial/office uses as the site is being used for tennis courts and is an ancillary use to the existing hotel and club. In making its recommendation for approval, the Planning Commission believes the project to be compatible with the adjacent hotel and golf course, and nearby residential and office uses. The proposed residential project would add an additional 79 units to the Block 900 – Hotel Plaza area, an increase from 67 to 146 units. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms on the adjacent site, or potentially transfer the entitlement of the remaining rooms (with City approval) within the Newport Center area.

Housing Element

To be consistent with the goals, policies and programs of the General Plan Housing Element, the project is required to provide a minimum of 20% of the total units (16 units) to low and moderate income households. The applicant is proposing to enter into an agreement with the City to provide these units off-site, within the City's limits. The agreement will be reviewed and approved by the City Attorney and Planning Director and will be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed project. The Planning Commission required the affordable units to be constructed and completed prior to the issuance of any certificate of occupancy for the project.

Charter Section 423 Analysis

Amendment	Area	# of Dwelling Units	A.M. Peak Hour Trips	P.M Peak Hour Trips
Pacific Republic GP2001-003	2,400 s.f. (80% of 3,000)	0	4.0 (80% of 5)	4.0 (80% of 5)
Newport Sports Museum GP2004-001	1,240 s.f.(80% of 1,550)	0	4.0 (80% of 5)	4.8 (80% of 6)
Proposed Amendment		79	39	35
Total	3,640 s.f.	79	47	43.8

As indicated in the preceding table, the project with "prior amendments" does not exceed the 100 peak hour trip, 40,000 square foot or 100 dwelling unit thresholds and a vote pursuant to Charter Section 423 is not required. Should the City Council approve the proposed amendment, it will become a "prior amendment" that will be tracked for ten years.

The proposed changes to Statistical Area L1, Block 900-Hotel Plaza and the Estimated Growth for Statistical Area L1 Table are shown as Exhibit "A" of the draft City Council Resolution (Attachment A).

Local Coastal Program Land Use Plan

The 1990 LCPLUP designates the site for Administrative, Professional, & Financial Commercial. A change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. However, within the Newport Center, there is approximately 200 acres designated APF and the two percent (2%) reduction proposed by the project is not a significant reduction.

The City is in the process of adopting a new Coastal Land Use Plan. The proposed CLUP tentatively scheduled for City Council consideration on December 13, 2005, has the site designated for Visitor-Serving Commercial (CV-B) uses. This designation was applied due to the existing use of the Marriott Hotel complex. The change in land use designation from CV-B to RM-C (Medium Density Residential C) is necessary for implementation of the proposed residential development and would reduce the land available for visitor-serving commercial uses by 4.25 acres. Although a reduction in area occurs, the opportunity to construct the remaining hotel room entitlement of 79 rooms would not be lost and it could be constructed nearby within the portion of Newport Center that is located within the Coastal Zone. The property is not located in close proximity to coastal resources, coastal recreational uses or the water and the project would not impact the adjacent visitor-serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity.

Planned Community District

The applicant desires approval of a Code Amendment to change the zoning designation of the subject property from Administrative, Professional & Financial to Planned Community (PC) District.

The Zoning Code requires that PC's be a minimum of 10 acres to ensure that the project would take advantage of the superior environment provided through coordination of parcels that can result from large-scale community planning, would allow diversification of land uses and would include various types of land uses. A waiver is sought because the property is 4.25 acres in size. The proposed PC District does not strictly meet the intent and purposes for a PC adoption as the project is a single use less than 10 acres. Although when considering it in the larger context of the Newport Center area that includes a mixture of shopping, hotels, commercial support uses, professional offices, and residential developments, the proposed PC allows the site to be developed with flexibility to allow the project to integrate within Newport Center to create a superior environment.

Proposed Development Standards

Density	79 units (18.59 units per gross acre)
FAR	1.90
Building Height	65 feet maximum
Building Front Setback	15 feet minimum (varies)
Building Side Setback	7 feet minimum (varies)
Rear Setback	13 feet minimum (varies)
Parking	2 spaces per unit for resident and 0.5 space for guest

The proposed draft Planned Community text for the proposed development is shown as Exhibit "A" of the draft Ordinance (Attachment B).

Parcel and Tract Maps

The applicant requests an approval of a parcel map to divide the 4.25-acre project site from the Marriott hotel complex for financing and development purposes. Lot No. 1 is 4.25 acres in size to be devoted for the proposed residential project and Lot No. 2 contains the remaining 9.54 acres to continue to be occupied by the Newport Beach Marriott Hotel. The subsequent Tract Map is proposed for condominium ownership of the 79 unit project. The required findings for the proposed maps have been met in accordance to the City Subdivision Code.

Traffic Study

A traffic study has been prepared for the project pursuant to the TPO and its implementing guidelines (Appendix D of the Mitigated Negative Declaration), CEQA analysis for cumulative projects and intersection capacity utilization (ICU), and General Plan analysis. The project will result in a net increase of 330 new average daily trips, 42 vehicle trips during morning (AM) peak hour and 39 vehicle trips during the afternoon (PM) peak hour. Fourteen (14) intersections were identified by the Traffic Engineer for inclusion in the study. The TPO analysis resulted in nine (9) out of fourteen (14) study intersections that exceed the one-percent threshold. ICU analysis was performed on these intersections and found that the project related traffic does not cause an unsatisfactory level of service at any of these

intersections and no significant impact occurs and no improvements are required at these intersections. The 9 intersections will operate at LOS D or better during peak hours.

Coastal Residential Development Permit (CRDP)

A Coastal Residential Development Permit is required when a project proposes to create 10 or more new residential units within the Coastal Zone. Affordable housing is required to be provided on-site if it is determined feasible to do so. The Planning Commission found that including the affordable units within the project was not feasible. Consistent with the previous Housing Element discussion, affordable units will be provided off-site within the City.

Environmental Review

A Mitigated Negative Declaration (MND) has been prepared for the proposed project in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA). The document was initially prepared to evaluate the project with traditional zoning of Multiple-Family Residential, followed by a 30-day review period from July 15 to August 15, 2005.

Since then, it was determined that the most suitable zoning designation for the property would be PC (Planned Community). This new zoning designation does not affect the size, scope or design of the project that would potentially create additional physical environmental impacts, and therefore, does not require additional recirculation and review of the MND. An addendum has been prepared to address the change in the zoning designation including two additional mitigation measures (3.3.N and 3.3.O), required by the Planning Commission, to address the traffic and air quality impacts pertaining to exporting of materials from the subject property to the dump site. They have been attached to the MND for the City Council to consider.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:


Rosalinh M. Ung
Associate Planner

Submitted by:


Patricia L. Temple
Planning Director

- Attachments:
- A. Draft City Council Resolution
 - B. Draft City Council Ordinance
 - C. Draft Planning Commission Resolution No. 1681 (Without exhibits)

- D. Excerpt of the draft minutes from the November 3rd, 2005, Planning Commission meeting
- E. Planning Commission Staff Report from the November 3rd, 2005 (Without attachments)
- F. Mitigated Negative Declaration & Initial Study (Errata, Response to Public Comments & Mitigation & Monitoring Program attached)¹
- G. Project Plans¹

¹ Distributed separately due to bulk. Available for public review at the City Clerk's Office.



**DRAFT INITIAL STUDY and
MITIGATED NEGATIVE DECLARATION
for the proposed
SANTA BARBARA CONDOMINIUMS PROJECT**

Prepared for:
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663
Rosalinh M. Ung, Associated Planner
(949) 644-3208

Prepared by:
David Evans and Associates, Inc.
9635 Granite Ridge Drive, Suite 300
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Dustin Fuller, Project Manager
(858) 614-4360

Draft: July 15, 2005

a zoning designation of APF and the proposed LCP would designate the site as Commercial/Visitor Serving (CV) to better reflect the existing land use (Hotel). The proposed Project would require an amendment to the existing LCP/LUP to change the current land use designation from APF to MFR or an amendment to the proposed LCP to change the proposed land use designation from CV to MFR, should that plan be certified by the California Coastal Commission.

(Sources: Newport Beach General Plan, Aerial Photograph, Newport Beach LCP, Newport Beach Draft LCP, and Site Survey)

A. Would the Project physically divide an established community?

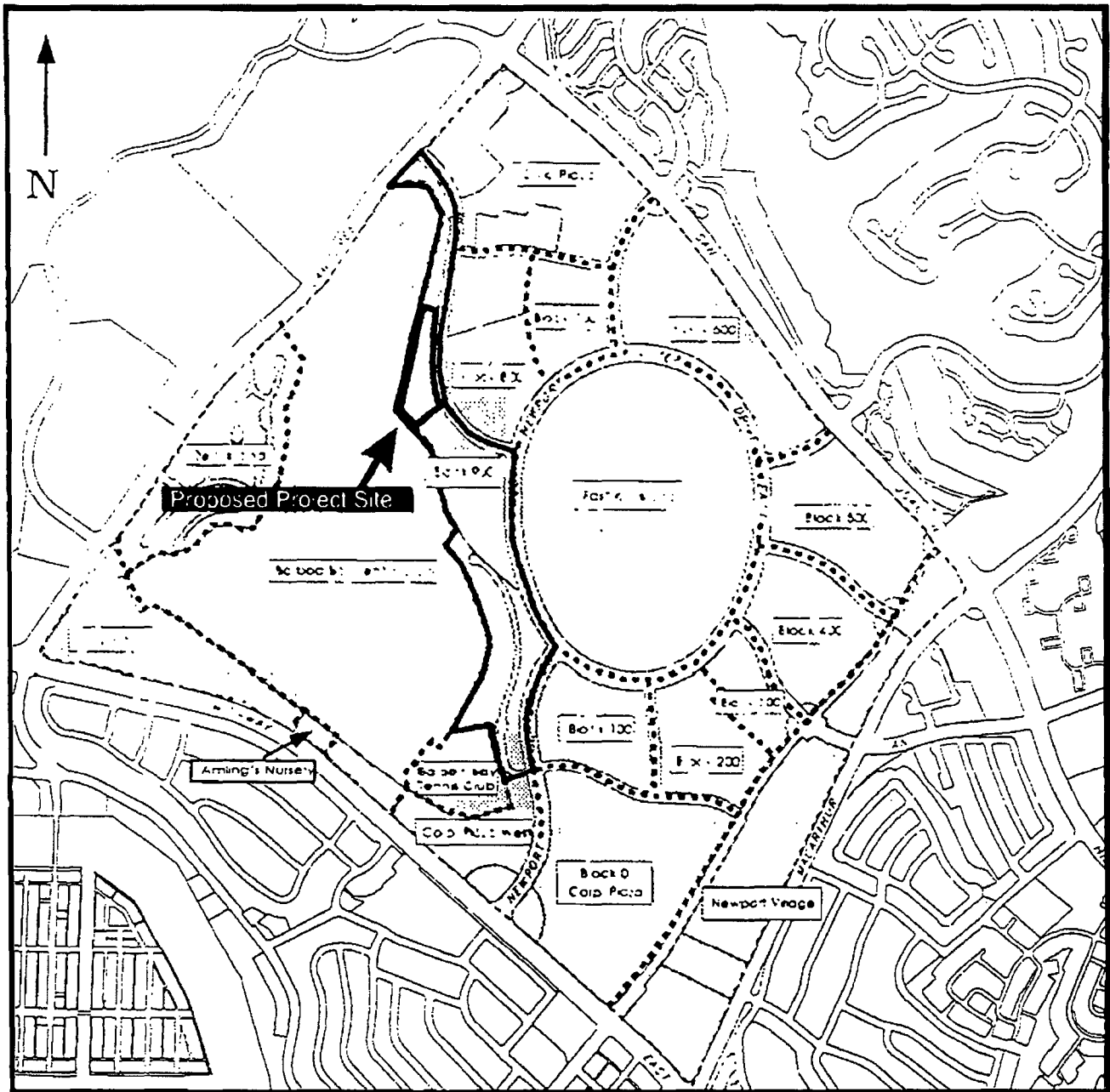
No Impact. The proposed Project site encompasses approximately 4.25 acres located along Santa Barbara Drive currently developed as tennis courts. The proposed Project involves development of a multi-family residential area with open space and recreational areas. Currently there is a multi-family residential development located northeast of the site across Santa Barbara Drive. The proposed Project would not extend into or through this development. Additionally, the other surrounding land uses, including commercial uses, would not be affected or divided by the proposed residential development. The proposed Project would not divide an established community.

(Sources: Newport Beach General Plan, Project Plans, and Site Survey)



B. Would the Project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

Less than Significant Impact. The proposed Project would involve a general plan amendment, LCP and zone change to alter the land use allowed on the proposed Project site. The current General Plan land use designation on the proposed Project site is Administrative, Professional, Financial (APF). The general plan amendment would change it to Multi-Family Residential (MFR). According to the Land Use Element of the General Plan, this land use category has been applied where multiple dwelling units are allowed on a single subdivided lot. Smaller condominiums and other individually owned attached housing projects are also given this designation. Further, this category allows for either single ownership or condominium development.

The change in land use designation from APF to MFR to accommodate the proposed development would not be in conflict with the Newport Beach General Plan because the site would be developed in accordance with the Development Policies of the Land Use Element of the General Plan. The proposed Project would be consistent with Policy A, as it encourages a diversity of land uses so that schools, employment, recreation areas, public facilities, churches, and neighborhood shopping centers are in close proximity to each resident of the community. Additionally, the proposed Project would be consistent with Policy D as it doesn't block public views and with Policy I as it is not located within a flood hazard area. The proposed residential development within the Newport Center area serves to implement these policies.

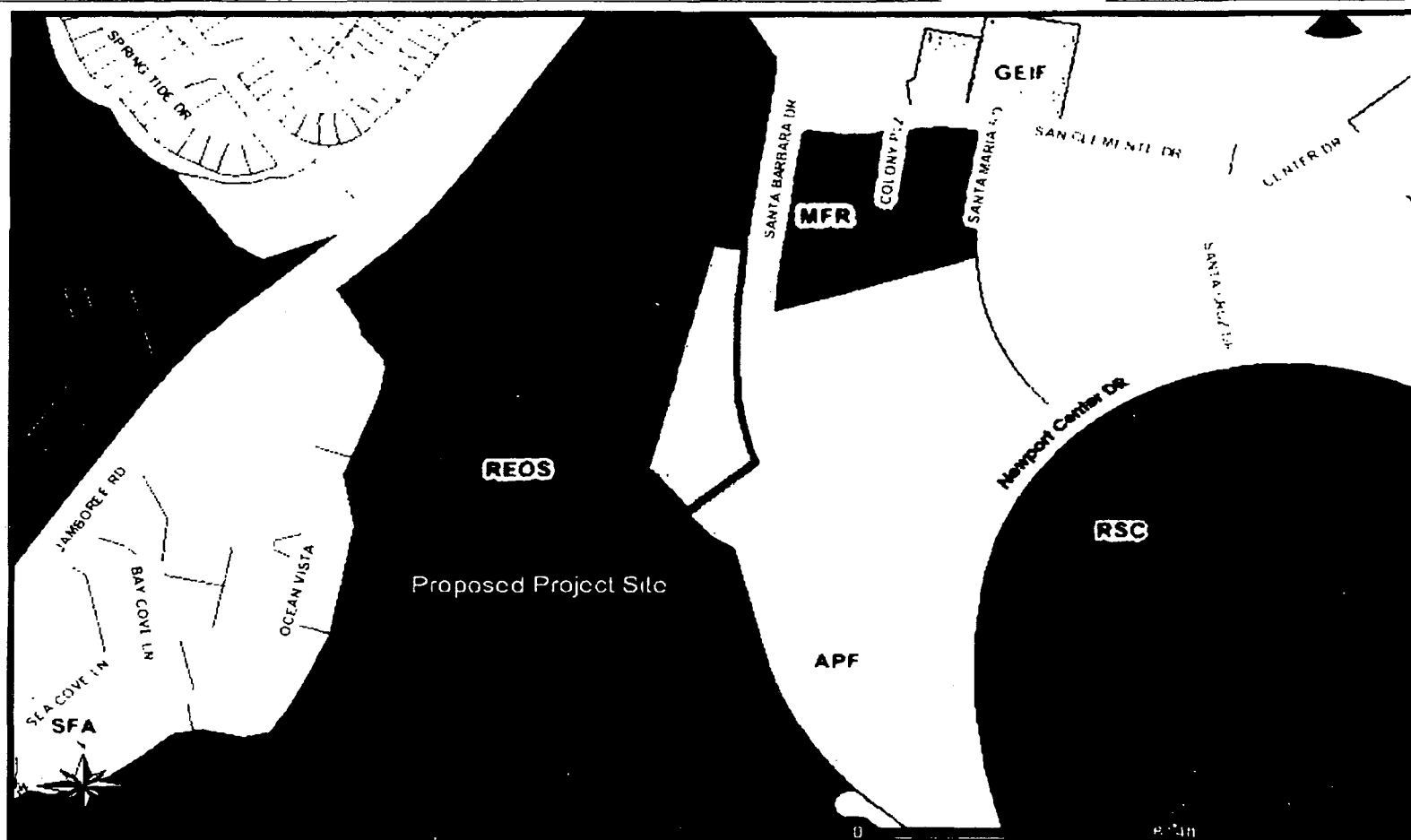


Source: City of Newport Beach

Project Site 
Block 900 

Santa Barbara Condominiums Project Newport Center Statistical Area Map

Figure
3-2



Source: City of Newport Beach

Santa Barbara Condominiums Project Land Use Policy Map

Figure
3-3

Additionally, the proposed Project would be compatible with other nearby residential land uses. A less than significant impact to the Newport Beach General Plan is anticipated with development of the proposed Project.

The proposed Project would also require a zone change from APF to MFR in order to be consistent with the proposed General Plan designation. However, as discussed above, the proposed Project would help promote Policy A of the City's General Plan and would be compatible with the residential zones to the south and northeast of the site. A less than significant impact to the zoning code is anticipated with development of the proposed Project.

The proposed Project site is within the designated coastal zone, which requires a Coastal Development Permit (CDP). As previously discussed, within the existing LCP/LUP, the subject property has a zoning designation of APF and the proposed LCP would designate the site as Commercial/Visitor Serving (CV). The proposed Project would require an amendment to the existing LCP/LUP to change the current land use designation from APF to MFR and an amendment to the proposed LCP to change the proposed land use designation from CV to MFR. This change in land use designation would lead to the loss of 4.25-acres of land available for office or visitor serving commercial uses. **With regard to CV and uses, the Block 900 - Hotel Plaza in the General Plan Land Use Element is allocated the development of 611 hotel rooms. The existing Marriott Hotel currently has 532 rooms (79 rooms below the total 611 room allocation). The hotel could conceivably construct the remaining 79 rooms in the future on the adjacent hotel site, or potentially transfer the entitlement of the remaining 79 rooms (with City approval) within the Newport Center area. Thus, the loss of CV acreage would not eliminate the ability to develop additional visitor serving commercial uses.**

Similarly, the change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. Within Statistical Area L-1 (Newport Center), there is approximately 200 acres designated APF and the 2% reduction proposed by the Project is not a significant reduction, and therefore, a less than significant impact would result.

As the proposed Project would not affect environmentally sensitive habitat areas, shore-line access given the location of the site, water or marine resources, or coastal visitor-serving facilities, it is not anticipated that the requested zone change to the existing LCP/LUP or the proposed LCP would create significant impacts to this land use plan. Additionally, the proposed Project would be compatible with the residential zones to the south and northeast of the site.

Setback requirements for the proposed Project area are governed by the City's Municipal Code. The requirements for the site are outlined in Table 3-7, *Project Setback Requirements*, below.

TABLE 3-7 PROJECT SETBACK REQUIREMENTS			
Newport Beach Municipal Code	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)
Multi-Family Residential	20	4	10
Santa Barbara Condos			
Residential Development	15	5	10

Source: City of Newport Beach Municipal Code and Santa Barbara Condominiums Site Plan

Based on these requirements, the proposed Project would not meet the required setback for front yards. The proposed Project would require a Modification Permit to deviate from this setback requirement. The majority of the proposed Project would exceed the front setback requirement;

however, several portions of the buildings are approximately 17 feet from property lines. Those portions encroaching within the 20-foot setback requirements include either architectural features or balconies/patios that are not habitable/living spaces. The reduced front setbacks, therefore, would not result in significant environmental impacts.

As previously stated, the Block 900 – Hotel Plaza area is permitted to have 67 residential units. The proposed Project would add an additional 79 units to this area. The proposed MFR designation allows up to 36 dwelling units per acre. Based on the acreage of the proposed Project site (4.25 acres) the maximum allowed number of dwelling units would be 153. However, the Project is proposing a total of 79 dwelling units or 15.3 dwelling units per acre, well below the maximum allowable density under the MFR land use designation. Therefore no significant impact would result from the proposed Project. As the proposed Project site is located in Statistical Area L1, the number of residential units would be increased from 67 to 146 (67 + 79).

(Sources: Newport Beach General Plan, Project Plans, and Newport Beach City Zoning Code)

C. Would the Project conflict with any applicable habitat conservation plan or natural community conservation plan?

No Impact. As discussed in Section 3.4, Biological Resources above, the County of Orange has prepared the Central-Coastal Orange County NCCP. However, the proposed Project site is not included within the boundaries of this plan and would, therefore, not conflict with this plan. No impacts to a habitat conservation plan or natural community conservation plan would occur.

(Sources: Site Survey, and Newport Beach General Plan, Central-Coastal Orange County NCCP)

3.10 MINERAL RESOURCES

According to the Conservation of Natural Resources Element of the City of Newport General Plan, oil deposits represent the only significant extractable mineral resources in the Newport Beach planning area. Oil companies are currently operating oil extraction wells in the unincorporated "County Island", located in the West Newport area. Since the State Shell-Cunningham Act of 1955 prohibits oil extraction on all State tide and submerged lands from the northerly City limits of Newport Beach to the Mexican Border, the County Island is the only location in the area where oil extraction activities are allowed. There are no mining activities within the City or on the proposed Project site. No oil fields or oil wells are present in or near the proposed Project area and the proposed Project site and adjacent areas are not subject to oil, gas, or mining operations.

(Sources: Newport Beach General Plan, USGS Laguna Beach Quadrangle and Site Survey)

A. Would the Project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

No Impact. The proposed Project site is not located in an area where known mineral resources are present. Future development on the site would not affect regionally significant mineral resources since there are no known resources on the site. The proposed Project site is also not identified in the Newport Beach General Plan as a mineral resource area.

(Sources: Newport Beach General Plan and USGS Laguna Beach Quadrangle)

CITY OF NEWPORT BEACH**Planning Commission Minutes**

November 3, 2005

Regular Meeting - 6:30 p.m.

		INDEX
ROLL CALL Commissioners Eaton, Hawkins, Cole, Toerge, Tucker, McDaniel and Henn Commissioner Tucker was recused and appeared on the dais at 9:00 p.m.		
STAFF PRESENT: Patricia L. Temple, Planning Director Aaron C. Harp, Assistant City Attorney Rich Edmonston, Transportation and Development Services Manager James Campbell, Senior Planner Rosalinh Ung, Associate Planner Ginger Varin, Planning Commission Executive Secretary Larry Lawrence, contract planning consultant David Lepo, contract planning consultant		
PUBLIC COMMENTS: None		PUBLIC COMMENTS
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on October 28, 2005.		POSTING OF THE AGENDA
CONSENT CALENDAR		
SUBJECT: MINUTES of the regular meeting of October 20, 2005. Motion was made by Commissioner Cole to approve the minutes as amended.		ITEM NO. 1 Minutes Approved
Ayes: Noes: Absent: Abstain:	Eaton, Hawkins, Cole, Toerge, McDaniel and Henn None Tucker None	
HEARING ITEMS		
SUBJECT: Bayside Residential Planned Community (PA2004-072) 919 Bayside Drive		ITEM NO. 2 PA2004-072
The project involves the redevelopment of the Newport Marina Apartment complex located at 919 Bayside Drive. The existing 64-unit apartment complex, located on approximately 3.92 acres, will be demolished and replaced with a 17-unit, gated		Recommended for Approval

residential community. The tentative tract map proposes to establish 17 individual residential lots for custom home construction, 1 common recreational lot with possibly a pool and shade structure, 2 landscape/open space lots. Private streets are proposed. A request to re-zone the site from MFR (Multi-Family Residential) to PC (Planned Community) is sought, which is accompanied with Planned Community Development Plan text that will establish development and use standards for the proposed project.

A Coastal Residential Development Permit is required to ensure compliance with the Government Code Section 65590 (Mello Act) and the Housing Element of the General Plan. The project includes the demolition of existing structures, grading, installation of utilities, private streets, landscaping, site lighting, site walls, storm water improvements, public access easements and upgrades to the public right of way adjacent to the project site.

David Lepo of Hogle Ireland, contract planner, gave an overview of the staff report noting that this item was first heard in August. During that hearing, the Planning Commission raised several issues and asked staff for a review. One of the issues concerned the subdivision of water surface in the bay. The City Attorney advised staff that those properties that were on the surface of the water included originally in the Subdivision Map could not be included in the Map and could not be subdivided, and were to be taken out of the area that was ultimately included in the Tentative Tract Map. As a result of that determination, the land area and the water area were reduced to the point that the Development Overlay that had been proposed for this particular property reduced the lot area for the development to comply with the maximum 40% lot area coverage that applies in the Planned Residential Development Overlay Zone. The underlying land use designation is multi-family residential and the overlay was going to be applied to the zoning to allow for the development of single family homes. With that determination, and absent the Planned Residential Development Overlay, staff concluded the best procedure was to prepare a Planned Community Text and change the zoning on that particular site to Planned Community, leaving the underlying land use designation in the General Plan as multi-family residential. Therefore, we are here tonight with a proposed Planned Community Text and a proposed Zoning Amendment to change the land use designation to Planned Community. With that the Planned Residential Development Overlay goes away as does the Use Permit that was required for development pursuant to the Planned Residential District.

Continuing, he noted:

- The Planned Community text includes development standards and conditions of approval that address the issues raised at the last meeting. Those issues are:
- Land Use designation and zoning of multiple family - the concern was that there might be an attempt to develop more than one unit on each of the residential lots being created by the Tentative Tract Map.
- Concern with the MFR zoning - somebody might try to develop three stories and up to 35 feet in height. Staff has included a development code section in the PC text and conditions of approval in the PC text that clearly state one unit for each of the residential lots not to exceed 28 feet in height.
- Concern that setback between the new property line wall at Bayside Drive was not adequate. Staff has included conditions and standards in the PC text that require a minimum of four foot setback between the right-of-way at Bayside Drive

and the new property line wall that would allow for a minimum of 4 feet for landscape area then the wall and then 10 feet of yard on the private property side of the Bayside wall. The right-of-way beyond the sidewalk on the private property side of Bayside Drive varies from 1-2 feet to 6 feet, so the affect will be that there will be between 5 1/2 and 10 feet of actual landscape setback between the back of the sidewalk at Bayside and the new property line wall.

- Concern with the setback of the private driveway serving all the residences. Staff has proposed that where there is a single story element adjacent to the driveway, a minimum setback of 5 feet be provided; where there is a two-story element, a 10 foot setback be provided. That is included in the development standards of the PC Text.
- Concern with sidewalks adjacent to the private street within the tract. Staff has determined that since this is a private, gated community, the sidewalks would not be necessary. Conditions are included in the PC text.
- Other conditions of approval deal with access to the water and easements across the floating dockway.
- Landscaping was a consideration, particularly the piece of property that adjoins this site on the n/w corner of Bayside that does not belong to the property owner, it belongs to the City. The decision was the Planning Director shall have the right to approve a landscape plan for this property including having the Homeowners Association maintain that property. This is included in the conditions of approval in the PC text.
- Concern of noise and noxious effects from the boat yard across the channel have been addressed in the provision that requires the applicant to submit a form to be provided to the lessee of the lot informing them of those concerns.
- There will be no dedication of lots F and G on the surface of the water to the City.
- Design amenities that the applicant has asked be included are indicated in the staff report and deal with fences, hedges, walls, arbors, trellises, fire places and barbecues.
- The action asked for tonight is for approval of the Negative Declaration with revised copies of the first two pages (distributed) resulting in reference to the Planned Residential Development rather than the PC text; the Tentative Tract Map, the Code Amendment changing the zoning of the site to PC Planned Community and adopting a Planned Community Text; a Coastal Residential Development; no traffic analysis will be required as this resulting project will have less traffic impact to this site.

Commissioner Cole asked why should the Planning Commission consider the waiver for this site.

Mr. Lepo answered that the Planned Community text allows for a mix of uses within the site. It allows the City to make certain that those different uses are compatible with one another in this development. This site is to be re-developed with single family homes to replace an apartment building and the use of the PC text is to make sure it is integrated with what is there now including the condos to the east, single family homes

to the west, and the commercial across the street. You have the opportunity to use the PC text to make sure that the access to the waterfront is maintained and enhanced with some of the conditions of approval. He then noted other areas where a similar process has occurred.

Commissioner Hawkins asked what the smallest parcel is that the PC text has been applied to?

Mr. Campbell noted the smallest size was 4 acres and this is 3.92 acres.

Commissioner Hawkins asked about the analyses of the land use impacts of the project within the Mitigated Negative Declaration and are the changes reflected in the revision handouts? The project as proposed now will have impacts due to the change in the zoning going from multi-family to Planned Community, is there an analysis of that?

Mr. Lepo answered the physical changes associated with this development were analyzed as well as consistency with plans. We have noted that the underlying General Plan Land Use designation of multi-family does include single family uses as are proposed here. Therefore, this plan is consistent with the General Plan and the PC text does allow development of single family homes. As far as policy document and plan documents, it is consistent with that change in the front. Physical impacts associated with physical changes are no different than what was analyzed.

Commissioner Hawkins asked about the change in the Project concerning the PC district and how those changes were or were not reflected in the Mitigated Negative Declaration for the Project.

Mr. Lepo noted this can be adjusted for technical accuracy.

Mr. Campbell noted:

- The land use section mentions the PRD Overlay in the initial study and we can make the change to agree with the project description. Referencing a handout, he continued.
- The marina was permitted in 1973 as a commercial marina with parking.
- Subsequent addition to the apartments in the early '70's eliminated that parking and the City conditioned the Parcel Map that created those additional units such that the marina would only be used by the Upland properties (project site, Cove Condominiums and the Shark Island yacht club).
- If this was to be continued as a commercial marina, parking would have to be provided.
- The original draft conditions maintained that this marina would be operated only by those Upland properties.
- Staff has changed their position on this matter and with the applicant's approval, we are requiring that the slips in front of this project site be used only for the residents of this project and discontinue the policy of sharing with the other two properties. Change to the condition has been made to specifically require that as reflected in amended condition 22. This restriction is to be noted on the map and

in the CC and R's and in the Planned Community Text.

- Public access - The PC text in condition 34 requires the applicant to execute an agreement that ensures public access as identified be maintained permanently as well as an irrevocable offer to dedicate a public access easement. This dedication will be on the property that they actually control as the existing walkway is on property owned by the Irvine Company. If the access is eliminated in the future because it is now on somebody else's property, we would then have this offer to dedicate and the easement that could be moved landward of the Irvine Company property onto the applicant's property. Should the access across the Irvine Company submerged land be eliminated, then we could require it to be relocated six feet closer to the bulkhead creating a new floating walkway at that location and then ensure that access across the docks is still maintained. This offer of dedication will be required prior to the issuance of a building permit and prior to recordation of the map.
- The applicant is required to obtain a new Harbor Permit. The historic transfers of this particular permit has been discontinuance or 'murky'. So, we want to clean this up with a new permit in the applicant's name which then would be transferred to the Homeowner's Association upon its creation so that the Homeowner's Association controls the Harbor Permit and then the rights to use the docks would be transferred with the sale of the individual leaseholds. The residents will be the only ones able to use those slips and therefore it will be a private marina.
- He then noted condition 10 has a changed reference to the improvements on the docks.
- Condition 12 has a reference as to who owns those improvements as requested by the applicant.

At Commission inquiry, Mr. Campbell noted the term 'landward' shows direction. There are 18 feet between the bulkhead line and the actual physical bulkhead that is water and the submerged land is owned by the underlying owner and is under the control of the applicant. What this does is repositions that walkway onto the land that the applicant and the property owner control. If The Irvine Company decides that in the future the docks can not be tied into the submerged land, which we don't expect to happen, then the applicant would be required to move the floating walkway six feet closer to the bulkhead to be used for public access.

Chairperson Toerge noted that the map shows an existing bulkhead at the property line. If the floating walkway was moved 'landward', it would be on the land.

Mr. Campbell explained the tract boundary runs along the bulkhead because staff did not want to subdivide those submerged lands and make them part of leasehold of some of these lots. He then discussed the boundaries.

Mr. Aaron Harp noted that on the map it is referred to in two ways. It is referred to as the US Bulkhead line and next to that a notation referencing existing bulkhead line, which runs along side where the floating walkway is now.

Mr. Campbell noted a change will be made to clarify as the intent refers to the US Bulkhead line. Discussion continued.

Mr. Harp noted the reason for this condition is to resolve the issue of the fact that the walkway is currently not on the proponent's property, it is on a third party's who has the rights. This offer is done in case of the loss of the right to have it on the third party property, then they could shift it over.

Commissioner Eaton asked about the enhancements to the existing walkway and if those are covered; precedence for free-standing fireplaces.

Mr. Lepo noted if those are the improvements that are required, then that plan would have to be reviewed and any changes to conditions will be made.

Mr. Campbell noted the free-standing fireplaces issue would require a Modification Permit in most cases because a fireplace would be higher than three and a half feet. The Zoning Administrator could not come up with any current permitted free standing fireplaces in bulkhead locations. Free-standing barbecues have been done, but not 8 foot high chimneys.

Commissioner Hawkins noted the slip provision and the walkway provision is problematic and presented a scenario. He suggested that there is a better way to do this in the conditions such as requiring the applicant to go ahead and get that easement over the existing walkway so that you don't have this potential problem.

Mr. Harp answered that if the Irvine Company revoked the right to have the walkway, they would probably also revoke the right to have the slips. The main intent of the condition is to ensure that the public has access to walk along, not so much as to access the slips. Typically, we don't make a condition where a third party approval is necessary. A condition could be edited that the offer to dedicate, or obtain, easements thereby giving the option of one or the other, that way you are not conditioning it on a third party.

Continuing, Commissioner Hawkins asked what sort of agreement is there now for the shared use of the slips. Is there a written agreement?

Mr. Campbell answered that there is not necessarily an agreement but the City in the '70's as a condition of the Parcel Map that is underlying this piece of property arranged that be done. So, we are requiring it to be that way. Staff does not know if there is a private agreement between the entities. The adjacent Cove Condominium has a very similar provision with its Tract Map that the Coves and the Yacht Club get to use what is front of them as a shared arrangement. That was required of that development in 1972. When they added on to this project, they took away the parking that was planned for the commercial marina so they recognized there was not parking. They again extended the same kind of shared relationship that was started with the first two properties (Coves and Shark Island Yacht Club) to encompass all three properties because there is one Harbor Permittee which is The Irvine Company at the time; that was the arrangement of the City.

Mr. Harp noted he concurs with the analysis.

Carol McDermott of Government Solutions, representing the applicant, noted the following contained within a PowerPoint presentation:

- An aerial of the project site depicting the property line as mapping the land ownership; however, the area controlled goes out 18 feet seaward of the existing

bulkhead. The US bulkhead is seaward 18 feet of the existing bulkhead. This control was granted to the applicant through a Grant Deed from The Irvine Company. The submerged land portion is not subdivided and that is why the property line is shown on the land portion of the site and not out 18 feet.

- The project consists of replacing the existing apartments with custom home lots and the bayfront public walkway. We are ensuring that public access is provided and enhanced.
- In the event that this were to be removed and the walkway was moved, then it would allow for some additional water area that would allow for slips of a slightly different configuration. That would have to go through the City and the Coastal Commission in order to occur. We understand that.
- It has been confirmed that the triangular piece of land at the end of the walkway is owned by the applicant. The walkway will be straightened out allowing for landscaping and a sign that enhances the availability of the public walkway. It will also provide for ADA access.
- The existing walkway will be enhanced by the remounting of lighting along the existing handrails and the removal of the cleats that allow for the side ties. We will construct an additional hand rail so there will be handrails on both sides with a clear access of 6 feet along with the handicap access ramps.
- She noted a submitted letter indicating the dock walkway meeting the intent and requirements of the Coastal Act, the Subdivision Map Act, the California Constitution as well as the City's Local Coastal Plan.
- Two exhibits showing grade elevations of the proposed homes on the Promontory Bay Front and the North Bay Front facing Balboa Island were discussed.
- An exhibit showing the vehicular turning areas on lots 9 and 15 was discussed.
- A Harbor Permit requires the boat slips to be operated as a residential marina and restricted to these lots. We accept that condition and understand it. The Permit will be transferred to the Homeowners' Association with the provision of maintenance and permanent public access.
- The site plan depicting the gating at the entrance with public access along the entire site was discussed.

Commissioner Eaton noted the concern of more open space between Bayside Drive and the homes to be outside of the walls as opposed to behind the walls. If the Commission agrees to have 10 feet outside the wall and allow a 5 foot setback behind the wall, would that be agreeable?

Ms. McDermott answered that they had agreed to a 10 foot setback behind the wall, as the Commission had determined at the last meeting, and also we would have a minimum of 4 feet along the street. We have found out subsequently that where we had assumed the property line was immediately behind the existing sidewalk on Bayside we found that the City's property line varied and we had between 2 and 6 feet behind the sidewalk before the property line. What we discussed with staff is that we would have an agreement that would allow us to landscape the City's property in

conjunction with our property and add 4 feet to that. It would result in between 2 and 6 feet of existing area that can be landscaped adding 4 feet to that so it would be between 6 and 10 feet of landscape area along that frontage. Allowing the 10 foot setback for the property owner would set the homes further away from Bayside Drive and that is what we would prefer.

Chairperson Toerge asked about the heights of the pads and if the conditions are consistent with those.

Ms. McDermott answered the text in the PC refers to these conditions. She noted that the language describes the existing conditions so that they would be replicated with the new development. She offered to clarify the language if it would be helpful.

Mr. Campbell noted the Tentative Maps show pad elevations and they are within tenths of the existing elevations. The interior pad elevations are not included. Referring to item 9 on handwritten page 30, it was decided that this language will be re-worked to include the existing conditions and the interior lot pad elevations.

Commissioner Cole asked about the landscape on the parkway on Bayside Drive.

Mr. Campbell noted that we will add a provision about the landscape in the conditions.

Commissioner Henn asked about the floating walkway and the docks. Is the homeowner's association responsible for the maintenance of the walkway and the docks?

Ms. McDermott answered that is correct.

Commissioner Henn noted that if The Irvine Company decides there can not be a walkway over their property I clearly understand the concept of moving the walkway in 6 feet, but, doesn't that raise perhaps an untenable burden on the homeowner's association to have to move the walkway and the docks because they are responsible for the maintenance of the docks and the walkway? It seems the solution as proposed does not make sense and I would propose to add an 'or' to that the applicant would seek to get an easement from The Irvine Company to maintain the current positioning of the walkway and the docks.

Ms. McDermott noted this could be a burden on the homeowners association. The issue is we have various documents that have given us the right to this. We think the chance of losing that right from The Irvine Company because of the way they have granted those rights, is minimal. However, the City wanted a fail safe and as a result of that we felt we could live with the condition as it was written. To the extent we are going to re-do the Harbor Permit and possible relocation of docks would be done as separate action.

Mr. Harp noted they have a significant argument that they have the right to maintain the walkway as is. What we were looking for was a condition that basically the City does not have to be involved with rights issues.

Commissioner Henn noted that if their rights do seem to be substantially, but perhaps not absolutely defined, it seems reasonably like it wouldn't be a big leap for the easement to be granted.

Mr. Harp answered that it may have been the intent for The Irvine Company to give up the rights to it so it may not be difficult for them to obtain the easement but there is that restriction as far as posing obligations where a third party needs to consent to it and that is why we didn't leave it as just an easement alone.

Commissioner Hawkins, referring to condition 12, asked who will own those improvements?

Ms. McDermott noted their request was to add language, 'leased or owned' because of the ownership condition and lessee condition.

Mr. Campbell noted we can use the language that is suggested.

Commissioner Hawkins noted he was in favor of that as some of the utilities can be owned by separate companies. He wants it to be clear that the ownership is not the City as the lease is held by the HOA and there will be no liability to the City.

Chairperson Toerge noted his notes from the last meeting (with a straw vote) show the floating access was to be widened concurrent with an offer of dedication of land as a means of compromise. He asked why there wasn't a dedication of land and the proposal is for 6 feet widening.

Ms. McDermott noted that the width of the dock was based on the Coastal Commission preference that structures not be added to increase the shadow that goes over the water which would effect the life of the plant material and/or the setting of the wildlife that lives in the water. Our thought was that if we could effectively increase it by removing the obstructions that perhaps that met the intent of what the Commission was looking for. So, we added to the safety and to the width without actually widening the dock, which would then necessitate a separate Coastal Development Permit for both the Harbor Resources and the Coastal Commission. It was our proposal in the hopes that would meet with what you were asking for, but it clearly did not increase the physical reasons for those reasons.

Continuing, she noted that she did not understand that the straw vote indicated a strong support for a dedication of land. When we worked with staff and the City Attorney's office there was a sense that provided we strengthen the access, that maybe that met the intent of what the Commission was saying. Perhaps you need to seek that clarification, but that is the way I read it.

Commissioner McDaniel noted the condition referring to minimal lighting. His recollection about the discussion on the widening would be to have some lighting so that it would be useable as opposed to just security.

Ms. McDermott answered that the intent was to make it so minimal as to be both safe and attractive at night time. It is such the people along Balboa Island facing our property, or people who live in proximity on our side, don't want a lot of lights down there. The intent was to place them on the dock railing in such a way that they would be out of the way from a walking standpoint but provide the appropriate amount of light. It is clearly the intent to make it safe and appropriate for those purposes. We can work with staff to make sure that happens.

Public comment was opened.

Public comment was closed.

Chairperson Toerge then identified key topics for purposes of organizing the discussion:

1. lateral access - land or floating
2. setbacks
3. landscape plan and architectural guidelines
4. turn-around designs for lots 9, 15 and 3
5. include in the PC Development Regulations the disposition of Lot A
6. pad elevations
7. FAR and how to calculate
8. improvements allowed in the setback areas
9. condition 4 regarding drainage on the property

Commissioner Hawkins noted:

1. Lighting study that is approved by the City.
2. Ownership or lease verbiage in condition 12.

Chairperson Toerge addressed the first issue, lateral access:

- The issue of lateral access is whether it is provided on land or on the floating access and whether the floating access is adequate and meets the requirements of the Coastal Act. He then cited from the Coastal Commission summary of staff report Chapter 3, 43.3.1.1-11. *Require a direct dedication or an Offer to Dedicate an easement for lateral public access for all new shorefront development causing or contributing to adverse public access impacts. Such dedication or easement shall extend from the limits of public ownership (e.g. mean high tide line) landward to a fixed point seaward of the primary extent of development (e.g. intersection of sand with toe or top of revetment, vertical face of seawall, dripline of deck, or toe of bluff).* This tells me the access has to be on land, regardless of what other people have suggested. He then discussed the possibility of redevelopment of the subject and adjacent properties. He disagreed with the applicant's assertion that there is a remote chance that the Cove condominium development would ever be redeveloped. He countered that the Cove Condominium development will certainly be redeveloped at some point in the future because 'ever' is a long time. He pointed out that just 10 short years ago the thought that the subject project, which contemplates the demolition of 65 high end rental units to be replaced with 17 custom home sites, was at that time considered infeasible. Who is to say when the Coves and the Newport beach Yacht Club will be redeveloped, enabling a continuous land based bay front walkway from Bayside Drive to the Marine Avenue bridge? He then referenced an exhibit depicting the lateral coastal access easements throughout the City, sever of which currently end in dead ends, but one day will connect to one another. This body is responsible for planning and

this chairman is attempting to do that with this by requiring this easement across the land enabling it to connect with other land based bay front easements that will be developed in the future. Staff then showed the exhibit that was explained and discussed. In conclusion, he noted it is the Commission's responsibility for the benefit of the community to follow the Code and to maintain this lateral access on the land despite for it's potential in the short term, to look somewhat disjointed. There are some people who don't want to walk down a ramp to use the access. (he gave examples). His objection to the floating access is that it is not consistent with our charge to uphold the requirements of the Coastal Act as they apply to new development. As I recall the straw vote taken last time, the Commission voted for 10 feet in width and an offer of dedication on the land so that some point in time when future land access was available it could be built on the land.

Commissioner Henn noted his recollection of the straw vote did not include a requirement for a conditional dedication on the land for the walkway, but perhaps staff can verify that one way or the other.

Mr. Harp noted it may be best to take another straw vote on this issue.

Continuing, Commissioner Henn noted that the floating walkway is a superior solution to the location of a walkway on the land. If the walkway is located on the land with a dead end at the far end, there will still be a ramp. The language in the Local Coastal Plan may or may not be the same language. I am sure there will be a sentiment for a long time that we preserve and enhance public access to the shoreline and I agree to that. As to the specific language that interprets that thought, that may change over time. For all of those reasons I am less concerned that the walkway be located or provided for a dedication on land.

Commissioner McDaniel noted as a member of the Local Coastal Committee he is quite aware of how much they have gone through to have access available to water for everyone here in Newport Beach. I am happy that we have the access so long as it is well lit, the fact that it is no longer 10 feet wide, I can accept that. I just want it wide enough so that everyone can use it and enjoy that aspect. Whether it floats, landward or seaward, I don't care, it is access and adequate to me. I am happy with the way it is.

Commissioner Cole noted his concurrence with comments of Commissioner McDaniel. This project provides significant access both vertical and lateral. The enhancements proposed are good ones and will create an attractive walkway for the community. It is a large burden to ask the applicant in effect to what would basically be a redesign of the entire plan when the alternative seems to be relatively reasonable and attractive.

Commissioner Hawkins noted the previous comments. He stated that the City's Draft Local Coastal Plan Section 3.1.1-11 requires an offer to dedicate an easement for public lateral access for all new shorefront development causing or contributing to adverse public access. What we have here is existing adequate public access that they are enhancing. I don't believe we can make those findings. I would be concerned about requiring the access on land due to the proximity of the public access immediately adjacent to a residential community. He affirmed he is in favor of the floating walkway with the enhancements.

Commissioner Eaton noted he agrees with the other Commissioners. He added that the this project will have to go in front of the Coastal Commission and if their interpretation of their language is different than our interpretation, then the applicants

will have to deal with that.

Docks and slips.

Commissioner Cole affirmed with staff that the residents of the Cove Condominium complex can not rent the slips associated with this project due to the limited availability of parking and that anyone who is currently renting slips will have to move.

Commissioner Hawkins noted his concern of the irrevocable offer to dedicate (IOD) a public access easement for a floating walkway landward. He suggested the following language to comply with the suggested changes by the City Attorney: "The applicant shall record either an irrevocable offer to dedicate a public access easement for a floating walkway landward of the bulkhead line (to be identified) or, an easement over the existing floating walkway." The alternative is important to have.

Mr. Harp noted the language will be re-worked if the Commission allows for the option of an easement in the existing condition as opposed to the irrevocable offer to dedicate.

Chairperson Toerge noted the two bulkhead lines need to be clearly identified and delineated to prevent further confusion.

Staff agreed.

Setback from Bayside.

Commissioner Eaton noted the following:

- Referring to the exhibit he stated that at one point the setback is zero at the west end and along the entirety of lot 1 on the east end it is actually 1 1/4 feet; whereas most of the project setback is 5-6 feet total.
- Frontage along Bayside is important and he wants to have at least 10 feet total between the City right-of-way and the property in front of the wall without having to require the houses to be moved further back.
- He suggested language, "Without requiring additional home setbacks that requiring at least 10 feet of landscaping be provided between the back of the sidewalk in front of the wall."

Chairperson Toerge asked about the disposition of the current City trees on site now.

Mr. Campbell answered those trees will be removed to put in the planned improvements.

Mr. Henn asked who is correct? The applicant stated that there was between 2 and 6 feet of distance between the sidewalk and the property line; or, is Commissioner Eaton correct?

Ms. Temple noted Commissioner Eaton is correct in the sense that at exactly one point the sidewalk and the property line are co-terminus and it is at the far western part of the property. For the greater portion of the property it is a minimum of 2 feet. Lot 1 easterly of the entrance appears to be 1.25 feet for that stretch.

Carol McDermott noted that 1.25 is accurate and that at the westerly end the way in which their landscaping and the property line connect with the enhancement of the landscaping where the sign will go, that point where it reaches zero is expanded into that we are going to be providing anyway. So, it is not zero at that point in effect. Our proposal is 4 feet plus the 1.25 at the easterly end and then it gets larger as it goes west resulting in a total width of 9-10 feet at some points.

Provisions of the landscape being 10 feet from the sidewalk with 5 feet setback for the homes. Following the discussion a straw vote was to approve as proposed.

Review the landscape plans and the architectural design scheme.

Following a discussion, the straw vote was to designate the Planning Director to review.

Further review of the turn-around plans for lots 9 and 15.

Ms. McDermott, referring to the exhibit, explained lot 9 at the southwesterly corner of the site configuration.

Following a discussion on the driveway lengths, turning radii, and distances it was noted that a condition is included whereby the Public Works Department will review an internal circulation and parking scheme that will be conducted by the applicant.

At Commission inquiry, Mr. Edmonston noted the reason the condition is there is to assure that the standards the City require are to be met. What is shown for the first lot, may be suitable, but the one shown for the second lot is rather contorted as it is offset from the garage door and makes the backing maneuver like an 's' curve.

Chairperson asked if the lot configuration had to change to accommodate this, would that then come back to the Planning Commission?

Mr. Campbell answered it would depend on the nature of the change. This lot could be made wider to accommodate and it could be determined to be in substantial conformance and would not need to be brought back. However, if there was a larger change to the plan, staff would make that judgment after review of the plan.

Ms. McDermott added that they will be happy to work with the Traffic Engineer in order to resolve the issue.

The Commission agreed.

Chairperson Toerge noted in the PC Development regulations for the use of lot A on handwritten page 29 does not include lot A. Should it be included in this table and designated for the use that is planned for?

Mr. Campbell answered this can be done. It is referenced on handwritten page 29 in the Statistical Analysis that refers to lot A as a common recreation area and it is described in the project description that all the lettered lots are common and are intended to accommodate common amenities and other improvements and are not developable for residences. We could do something if you want. It was determined not necessary.

Building pad elevations to be within 1/2 foot of existing grade.

The Commission was satisfied.

The floor area ratio issue.

Mr. Campbell affirmed that the floor area is calculated by deducting from the gross lot areas, the setbacks and then multiplying it times the FAR. The proposed FAR for the project is 1.75.

Commissioner Eaton noted the language was not in the PC text, which becomes the operating document.

Mr. Lepo noted it was on handwritten page 29 in footnote 2.

12-foot walls.

Mr. Campbell answered the provision is the exception to the height of fences and walls where the front wall of the house could extend perpendicular to the side property line from the front wall of the house to the side property line a maximum of 12 feet. It is an architectural feature the applicant wants to provide.

Ms. Temple added that this type of feature has become very popular with side yard entrances. The material used for these features would be R2 rated.

Fireplaces and barbecues 4 feet in setbacks from side yards and/or the bulkheads.

Commissioner Henn clarified that this also includes the ability to build a 10-foot high chimney. Staff clarified. He noted that would not be appropriate due to safety concerns.

Commissioner McDaniel noted he could not support this.

Chairperson Toerge stated this should be subject to a modification permit. To create the blanket approval here is not the appropriate maneuver.

Mr. Campbell noted that built-in barbecues are typically taller than the maximum height and are fairly common with the outdoor living spaces people are providing. It is a common modification request and are permitted more often. The fireplaces are a different matter. Staff is not comfortable with those either and feel that modification permits should be required. However, adding the low built in gas barbecues that are fairly common, staff asks that this be included as they generally do not present any problems.

Chairperson Toerge noted there is a mechanism for the fireplaces to be reviewed on their merits.

Commissioner Henn suggested that any structure above five foot would require a modification.

Mr. Campbell noted this can be established with the PC text regulation. Today's

standard could accommodate that and the typical barbecues meet that height. The fireplaces would be regulated.

Ms. Temple noted this has come up during discussion with the Councilmembers. No direction has been given to staff, but much commentary has been given to allowing barbecues up to a limit height of 5 feet.

Following a discussion on permanently installed barbecues, it was determined that fireplaces will be dealt with separately through the modifications process and up to a five foot height with a four foot setback from the property line would not. The Commission agreed.

Condition 4 - on site drainage.

The drain pipe apparent at low tide water source is undetermined. Staff offered it may be a storm drain and following a brief discussion noted that all requirements and Water Quality Control Board and NPDES regulations will be met so that no drainage will go into the bay.

Floating access completion.

Staff noted, and the applicant agreed, that there will be a condition including language with time and prior to the certificate of occupancy.

Condition 12 suggested language change.

All on-site common area improvements such as parks, docks, entry gates and entry, all on-site drainage sanitary sewer, water, and electrical systems shall be **leased or** owned, operated and maintained by the HOA.

Commissioner Hawkins noted his concern of the lighting on the floating dock and of the individual residents that may create spill/glare problems across the bay. He asked that staff come up with a condition.

Ms. Temple noted there is a condition of approval in the City's standard requirements requiring a Photometric Study to make sure that light spillage and glare are addressed.

Commissioner Hawkins noted his concern of the environmental document. He asked if the Planning Commission agreed that land use analysis will include the change for the PC text? The Commission agreed.

Ms. Temple noted staff will prepare an addendum and have it completed for Council consideration.

David Lepo noted the following changes during the Commission's discussion to be included in the motion:

- Environmental document language will be edited on pages 26 and 27.
- Changes on the handout materials: Conditions 10, 12, 22 and 34 changes will be made.

- U.S. Bulkhead line determination.
- Add/change/delete provisions where previously called for applicant to landscape and maintain the weed lot that is now part of the applicant's lot.
- Add condition requiring applicant to landscape area at Bayside Drive on lots C and D as maintained by the HOA.
- Planning Director will review landscaping and architectural design guidelines.
- Quantify condition requiring Public Works to approve the turn arounds for lots 3, 9 and 15.
- Pad elevation - language in PC text as in Tentative Tract Map.
- Provision in PC text relative to barbecues within 4 feet of property line and up to 5 feet in height. No fireplaces.
- Added condition requiring enhancements on dock in reference to the exhibit regarding timing.
- An irrevocable offer of dedication will be provided regarding the frontage area.

Motion was made by Commissioner McDaniel, using the recommended language by staff with changes proposed by the Commission, to recommend approval of Code Amendment No. 2005-007, Use Permit No. 205-026m Tract Map No. 2004-001 (TTM No. 15323) and Coastal Residential development No. 2005-001 to the City Council.

Chairperson Toerge noted that this is a quality project; however, the City has an obligation to follow the Coastal Act and given my interpretation of it, I won't be supporting the motion.

Commissioner Henn asked if we are violating the terms of the Coastal Act by going forward as proposed.

Mr. Harp answered the language is added to the plan. The focus is whether or not the new shorefront development is contributing or causing adverse public access impacts. The determination could go either way. This will go to the Coastal Commission for approval/denial and they will require what access they deem appropriate if different than City's determination. It is not a violation to proceed with this action.

Ayes:	Eaton, Cole, McDaniel, Hawkins and Henn
Noes:	Toerge
Absent:	Tucker
Abstain:	None

* * *

Following a brief intermission the Commission resumed with Commissioner Tucker taking his place.

SUBJECT: John Walter Velardo (PA2004-274)
3809 Channel Place

ITEM NO. 3
PA2004-274

Approved

Request a Variance to the maximum allowable floor area and minimum required open space for the construction of a 988 sq. ft. residence on a 1,034 sq. ft. lot. The application also requests a Modification Permit to allow the proposed residence to encroach within the front, side and rear setbacks.

Mr. Campbell gave an overview of the staff report noting that the property is presently developed with a two-car garage and the applicant wishes to construct a 2-story residence with a 2-car garage on the ground floor and it will be approximately 988 square feet in total area. The variance is required due to the application of setbacks to the subject property resulting in no buildable area. A modification for setbacks is also required due to the fact that the lot has physical difficulties in facilitating construction of any kind. There are reasonable arguments to both approve and deny the applications. A Certificate of Compliance had been granted to this property as required by the Subdivision Map Act; however, it does not grant any particular development rights and it does simply indicate that the lot can be financed and sold. What needs to be determined, at this time, is the design and amount of square footage, and the location of the building that is appropriate for this lot, or is something smaller for this lot or leaving the lot as is with the existing two-car garage as developed.

Chairperson Toerge asked about the Certificate of Compliance.

Mr. Harp answered that a Certificate of Compliance is a remedy for properties that are conveyed in violation of the Map Act and in essence is a means to bring a property into compliance with the Map Act. However, it is not an optional item for the City to issue. Just because a Certificate of Compliance has been issued does not give them the right to develop a property, or have a right to a building permit, it simply brings them into compliance with the Map Act so that they can sell or lease the parcel. No development rights are given.

Commissioner McDaniel asked about a letter received regarding water pipes under this property connecting to another property.

Mr. Campbell answered there is a water line under the garage itself that serves the adjacent property that is the portion of the larger lot that was subdivided off in 1960. A private easement had been created with this transaction for the southerly three feet of the lot. The project, as proposed to be redeveloped, would create the three foot setback and maintain that water line free of obstructions. The project does adhere to the private easements of 1960.

Commissioner Tucker asked about the lot and what can be done with it. We have a lot that has effectively been created out of something that was not legal to begin with, now someone has come forward asking for a variance to build on this legal lot. Isn't that our question that something can be built on it before we worry about what it is? How did it become legal, assuming it is zoned? Are you saying you wouldn't be able to build on it all?

Mr. Campbell answered that if there was a project that could be built on this lot without a variance, or a setback modification, we would be issuing a permit for that structure. You can build on it, but in this case, a variance and modification permit are required.

Ms. Temple noted that there currently is a two-car garage on the property. That development, while it doesn't comply with the setback requirements or the floor area limits just as the proposed home and new garage does not, it does exist and doesn't

meet a building permit in order to stay in existence. In and of itself it does represent a viable economic use of the property and can be rented to anyone in the neighborhood to provide supplemental parking, and/or sold to one of the bayfront property owners and used to support that bayfront development through an off-site parking agreement and allow the actual bayfront structure to be expanded in floor area. There are other ways to use the property economically without building a house on it.

Commissioner Toerge noted that if we didn't need a variance then somebody could come in and apply for a building permit. The lot is a legal lot that we would have to issue a permit for it.

Ms. Temple answered yes, but because of the absence of any buildable area today, if they tore the existing garage down, they would need a variance for anything.

Commissioner Tucker noted there are other lots in the City where the Districting Map goes one way and at the end of the block and the house is oriented another way you end up with zero building area as well. It is a legal lot and to me this is why you do variances because you can end up with no building area on a legal lot and the question is, what is reasonable?

Mr. John Velardo, applicant, noted he has owned the property for 23 years. It has been his dream to build a beach house on it for his family to use. They have hired an architect and will be complying with the City's requirements and will be maintaining the same footprint as the existing garages. There will be no larger dwelling than is there now. At Commission inquiry, he noted he has read and understand the conditions of approval.

Commissioner Tucker noted an email from James Hazelton who contended that the building of this house would somehow deny access to his garage. Would staff confirm the answer to the email.

Mr. Campbell noted that the location of the structure is not within the private easement area that is for the benefit of the adjacent property. Now, does the proposal create some other impediment that the owner might feel, I don't know, but the building itself is not in the easement area. The two garages (referring to the one proposed and the one on the abutting property) come at 90 degrees to each other, so the only time they would conflict is if they were to be used at the same time.

Mr. Campbell added a condition relative to the interior dimension of the garage needs to be rectified as it is off by 6 inches. The plans will need to be revised to assure a minimum interior depth as required by the Municipal Code.

Commissioner Hawkins asked what the current use of the garage is.

Mr. Velardo answered the current use is storage, no vehicles are involved.

Public comment was opened.

Margie Kirstein, property owner of 505 and 505 1/2 38th Street, referring to the vicinity map, stated her properties are the ones most affected by this project. She noted her opposition to this project:

- The setbacks are extreme and do not allow for any kind of air space.

- The density, which originally was one lot, will now have three units on the original R2.
- This lot does not meet the 1,200 square foot minimum, and, at one point this development comes within 12 inches of the property line and sidewalk.
- There is a right to develop the property, but not to just any standard the owner wants.
- The garage space is currently rented.

David Prince, resident and homeowner, noted the following:

- Both he and his brother support this application.
- The island as a whole will benefit from this upgrade.

Public comment was closed.

Commissioner Cole asked about the third finding for a variance, if this is a granting of a special privilege inconsistent with the limitations on other properties in the vicinity. The gross area of approximately 988 square feet that is below the floor to land area ratio allowed in the vicinity, is that correct?

Mr. Campbell noted staff looked at other properties in the area and calculated the floor area to lot area ratio of those houses as a way to compare the amount of floor area being requested. What is proposed is proportionally lower and would support the finding that the approval is not the granting of a special privilege to the property owner.

Commissioner Cole asked if this was necessary for the preservation and enjoyment of substantial property rights of the applicant. This has been operating for 20 some odd years as a garage with the same basic use, is that correct? I am trying to make the findings that are important to grant the variance.

Mr. Campbell noted this garage has been there since 1960 with the same basic use that has never changed.

Chairperson Toerge referring to condition 7 says that, '..... the garage shall remain available for parking of vehicles at all times....' There is very little storage in the house itself, and I think that condition should be enhanced to, '....shall only remain available for the parking of **operable and legally** registered vehicles at all times...'

Mr. Velardo agreed that would be acceptable.

Commissioner Tucker noted:

- Variance requests are usually received to re-do a structure.
- It is necessary for a substantial property right.
- How this came into existence, they are all over town, but compared to other variances, this one certainly falls within that category.
- The question is, is it too much house for the space involved?
- It passes the test that we typically apply.

Motion was made by Commissioner Tucker to approve the variance request and the modification permit for PA2004-274 with the conditions attached with the changes of the minimum interior depth of the garage is per the Municipal Code and to have condition 7 stipulate that it is operable, registered vehicles being parked in that garage.

Commissioner Eaton noted we have had a number of applications where the back ends of lots have been quartered off. This lot is different from those as they have been done before the Map Act took affect so they were grandfathered and therefore, not illegal at the time of 'cutting'. This lot is one of the tiniest lots the Commission has seen and is a triangular and therefore less useable. It is further encumbered by two different easements. My concern is that if we validate what has occurred here, that someone goes out and cuts off illegally their lot, then someone (a subsequent) buyer applies for a Certificate of Compliance, which makes it legal to transfer or at least finance or lease. Why wouldn't this be a precedent to someone else looking to do a similar transaction? I would hate to encourage that scenario and therefore I do not support this application.

Commissioner McDaniel note he agrees with the previous comments. He added that other variances have been granted on properties that had a house already on it and they were applying for some type of parity to make it something useable. This one is different where it has always been a garage and I think they have viable economic use and this does not take away anything that they had before. I think this would set a precedent and therefore am not in support of this application. It is a congested area and it is my opinion that the garage will be a living space, with a ping pong table, then a bed, etc. I don't think it will be used for parking in this congested area.

Commissioner Tucker asked if somebody decided to pare off their lot and sell and convey it to somebody else, would we have to issue a Certificate of Compliance under today's version of the Subdivision Map Act?

Mr. Harp answered was answered yes.

Mr. Campbell added that if there was a project to develop with that scenario, then staff would condition that Certificate of Compliance with all current standards of the Subdivision Code.

Mr. Harp added that if there was a violation of the Subdivision Map Act and the owner asked for a Certificate of Compliance, the City would have to give it to them. Whether or not you have to let them develop, you don't. Basically you do not have to give them a variance or a building permit. However, you condition the project to comply with the Subdivision Map Act. There are other penalties with doing it that are not tied to the Certificate of Compliance. Because this is an undersized lot, they need a variance because right now they can not build anything on it. Whether you give them that, it is your discretion. It is not a 'takings' issue because they are already using the lot for a garage that has a viable economic use.

Discussion followed.

Chairperson Toerge noted that there are some extraordinary and exceptional circumstances here. In terms of the substantial property rights, it is zoned residential, it is not zoned for "garage". In order to enjoy that substantial property right, allowing the applicant to build a house for residential purposes seems to be consistent with that. It is consistent with the Code and does not damage anybody or creates any safety issues. He is support of the motion.

Commissioner Cole noted he agrees with the Chairman and is in support of the application.

Commissioner Henn noted we do not have the perpetrator before us, I am sympathetic

to the current owner's situation. I visited the site and I don't believe the proposed plan is inconsistent with the character of the neighborhood.

Commissioner Tucker asked what year the Map Act was adopted.

Mr. Harp answered that it was 1971 when it was actually codified, but it goes back to the 1800's.

Mr. Campbell added that the City established subdivision standards and in 1959 the Code was changed to require parcel maps reviewed by the Commission if the lots that were suggested didn't meet the minimum parcel size, which this lot does not. This division would have required a map in 1959 if the division happened in 1960.

Commissioner Hawkins noted that the finding on the certificate of compliance say that you issue the certificate but the Planning Director states that the above described real property does not comply with the applicable provisions, nevertheless, pursuant to the Subdivision Map Act what we are creating is an identifiable parcel that we can track. The arguments presented tonight are very important, but this parcel is too small and Newport Island has a host of problems that this project would exacerbate and so he can not support the motion.

Ayes:	Cole, Toerge, Tucker and Henn
Noes:	Eaton, McDaniel and Hawkins
Absent:	None
Abstain:	None

SUBJECT: Brookfield Homes (PA2004-251)
1301 Quail

ITEM NO. 4
PA2005-251

Brookfield Homes plans to construct 86 multi-family residential condominium units within 7 buildings that will be 45 feet in height with floor plans ranging from 900-1,950 square feet on a 3.7-acre site located at the southeast corner of the intersection of Spruce street and Quail Street in the Airport Area. A General Plan Amendment is proposed that would change the land use designation of the property from Retail & Service Commercial to Multi-Family Residential. An amendment of the Newport Place Planned Community is sought to change the use of the site from a 304 unit extended stay hotel to multi-family housing. The changes to the Planned Community district regulations will establish use and development regulations for the proposed condominium project. A tentative tract Map is also sought that would subdivide the lot to establish 86 condominium units.

Continued to
December 8,
2005

Larry Lawrence, City's consultant case planner for this project, gave an overview of the staff report, noting:

- Project consists of 7 buildings up to 45 high within a 'U' shape with garage level located partially below grade.
- The applicant is asking for Commission comments and questions and then a continuance to November 17 for further review and a forwarding of a recommendation to the City Council.
- The project will be changed from a retail and service commercial to a multi-family residential designation.

- The zoning amendment would add provisions for residential development to the Newport Place PC regulations. These residential standards were derived by staff from the submitted site plan as shown on the wall.
- The changes would include from a hotel to a multi-family residential, reducing the building height from 60 to 45 feet, and establishing development standards to accommodate the project as submitted. Reduction in building height and overall use will have positive benefits in terms of building mass and traffic generation.
- The setbacks from Quail Street and Spruce Street average about 13 feet. These setbacks may not be enough to provide visual relief and adequate landscape buffering. The interior of the project is taken up by paving and building coverage which does not leave ample room for landscaping.
- The 217 space garage and other parking spaces provided on site, meet the Zoning Code numerical standards. Those spaces include 72 tandem garage spaces. If the spaces provided do not satisfy that demand in actual usage, there is no permitted on-street parking on surrounding streets to absorb the overflow. Therefore, if there is overflow, parking facilities for adjacent office development may be impacted.
- To address these concerns, In August of 2005, the applicant commissioned a parking study for the project by the IBI Group. That study concluded that based on the requirements set forth by the City of Newport Beach, this project will supply sufficient parking to meet the estimated demand generated by residents and guests.
- He noted that in addition to the benefits of the project listed in the report, the applicant has submitted arguments in favor of the project and are attached to the report as exhibit 3.
- The central issue of this project is the land use. Is it appropriate and desirable to establish residential land use at the proposed location? That issued is addressed by the pros and cons contained within the staff report.
- Project design is secondary to the land use issue. If appropriate, the architectural design and setbacks if acceptable, warrant approval.
- The opportunity to provide in-fill housing opportunities near a major employment center and to improve the job housing balance in the area is a powerful argument in favor of the project.
- Because of the concentration of office and commercial uses, the area is heavily impacted by peak hour traffic at present. The change in land use would result in less peak hour traffic generation than the existing hotel designation on the property.
- Potential problems are inherent in establishing a residential designation on one parcel surrounded by office and commercial development without a coordinate plan for a residential development in the airport area.
- Staff asks the Commission for public input and deliberate on the analysis and continue this item to November 17th to allow further consideration of the project

and the forwarding of a recommendation to the City Council.

Mr. Campbell added:

- Staff prepared and placed a memo about the traffic study. We discovered that we used the wrong trip generation rates for the study prepared for the project. It over predicted a.m. traffic and under predicted p.m. traffic (less than a dozen trips). We prepared an analysis and arrived at the same conclusion that there would be no impact to traffic.
- There is a set of CC and R's for Newport Place, which presently prohibit this land use in this area. The applicant would need to seek and obtain an amendment to those CC and R's, which is the group owners would all have to agree to (70%).
- Staff believes the central focus for tonight is the land use if appropriate then move on to the design and other technical points.

Commissioner Henn asked:

- Is it premature to be discussing this project as we are in the midst and in the advanced stage of considering a General Plan update, which includes this area as one of the critical study areas for land use?

Chairperson Toerge answered that we have had a project such as this that is 'outside of the box'. For instance we had a preliminary presentation with the Lexus Dealership project and other relatively complicated projects in an effort to give the applicant and staff some direction as to how we are leaning so they do not pursue a path and spend staff and applicant time pursuing a path that the Commission does not agree with. They are appropriate for that reason.

Commissioner McDaniel noted that if this did not happen then the item gets continued anyway.

Commissioner Tucker asked:

- One of the things to be covered at the next General Plan Update land use session will be the airport area. Why shouldn't we wait until the policy decision on housing in the airport is made?
- He asked for a color/materials board, a marking of elevations and a copy of the roof plan.
- He then asked why Spruce Street is a four lane street.

Mr. Lawrence said he would provide the exhibits requested at the next meeting.

Mr. Edmonston answered that Spruce Street was planned to go over the freeway and join the Spruce Street that is now blocked off.

Continuing, Commissioner Tucker noted the prohibition against street parking, you could have one lane there to accommodate street parking and be quite comfortable?

Mr. Edmonston answered the concept at that time of development was no on-street parking and that was the standard in terms of actual demand. It could be explored and is one of the issues being looked at in the General Plan update as a residential use that could accommodate changes to the streetscapes, whether parking or wide parkways, etc.

Ms. Temple added that if an abandonment or lane reduction might be appropriate, then staff could look at the Circulation Element with the thought of an amendment to accommodate this process.

Commissioner Tucker noted:

- Tandem parking has always been an issue for the Planning Commission.
- The applicant needs to explain why this item should be determined prior to the General Plan update; would this be the development plan the applicant would set forth if there was no Green Light.
- Has the Fire Department looked at the internal street circulation? He was answered yes.
- The wall along Quail Street looks to be very close to the units as well. What will the wall look like?

Commissioner Eaton asked if the TPO traffic study needs to be approved and, if so, the Commission needs to see the study. What would the City and/or the CC and R's require if this parcel was developed in accordance with its current designation as hotel?

Mr. Lawrence answered that the current designation of hotel using the front setback is a minimum of 17 1/2 feet average 30 feet, the corner lot side is a minimum of 14 1/2 feet average 27 feet, and the interior side would be a minimum 10 feet. The average would be 30 feet for the front, which would be Quail, possibly Spruce, and for the Quail outside, the same at almost 30 feet.

Mr. Phillip Bettencourt, speaking for the applicant, noted the following:

- This application includes a General Plan Amendment and zone change to convert the vacant, industrial site.
- The site covers approximately 3.7 acres and includes affordable housing.
- There will be easy access to recreation, businesses, shopping and freeways.
- Traffic impacts are less than significant with modes mitigation.
- Airport noise contours - we are beyond the 65 CNEL Contour Zone although air conditioning for all buildings is recommended and accepted by the applicant.
- We are consistent with the John Wayne air loop and we are waiting for receipt of our final FAA clearance.

Dave Bartlett of Brookfield Homes, noted the following:

- This project is an opportunity for the City to see a transformation of residential land use into the airport area. He gave a brief description of his company.
- The Quail and Spruce Streets elevations are an important factor in siting these buildings close to the street and will contribute to the street scene that will be maturing over the years.
- Referring to an exhibit, he noted the importance of the buildings orienting towards the streets.
- Setbacks and vertical and horizontal separation from the right-of-way appear to fit into the context of the site.
- We have a materials board that include stucco, wood siding, brick and metal roofing.
- He noted the garage and tandem parking that provide for 217 spaces, of which 72 are tandem garage spaces within the same unit, and 167 covered spaces and additional flex space on garage level to be used for storage, home office or work areas.
- He then explained the building unit diagrams on the various levels.
- Referring to the site plan he noted the gate access/autocourt access/emergency access/pedestrian access.
- He then referred to the common park area.
- 17 of the 86 units are proposed for affordable housing to moderate income units and is a critical element in the consideration.
- This site is designated as suitable for residential development.
- He then enumerated residential uses within commercial uses in the City.
- He then noted the proximity to commercial and freeway systems.
- Benefits of the project are smart growth and new urban strategies, reduction of traffic, this is a first step in mixed use for the airport area as well as the affordable housing aspect.
- Our next steps are to respond to your concerns. We have some items with the Airport Land Commission and the FAA that will be dealt with as well as any concerns needing to be mitigate from the Negative Declaration as well as concerns from the Council considerations.
- There are pros and cons to this project, but this project allows for a high density project at 23 units per acre that is consistent with the threshold of the Green Light Initiative, has no traffic impacts, no noise impacts, close to infrastructure and services. This is a modest step in the right direction for mixed use in the airport area.

- Would we propose a bigger project if there was no Green Light? I don't think you could get a quality, bigger project here on this site for sale without increasing the density and sacrificing what you want to do in a 'for sale' project.

Adrian Foley, President of Brookfield Homes, noted:

- Market demand for housing - lower maintenance housing closer to places of interest and travel are high in demand.
- The growing sector of young professionals who want to live closer to their work.
- Population growths along with job creation creates demand for housing.
- This project presents an opportunity for high quality convenient housing close to places of work and benefit the community.

Public Comment was opened.

Gabriel Klanian, resident, noted his support of the project as it is will be quiet at night when the airport shuts down and the street is not highly traveled. If the buildings are constructed with sound proofing, the air-conditioning will be suitable to keep the noise. People such as myself do not want the maintenance of a yard and this would be quite suitable.

Doug Owen, noted his support of this project due to the proximity of the airport and local amenities.

George Minter of Los Angeles and speaking for Brookfield noted they have received letters in support of the home ownership prospect. He distributed the letters noting highlights such as proximity of home to work; ownership possibilities, and creation of homes without using expensive land.

Jim Light, one of the owners at the property at 1401 Quail Street, noted his opposition to the property:

- The only exit from this project is directly across from his property.
- No on-street parking so overflow parking will be onto his parking lot.
- Impact of trash - we have commercial trash containers on site and there will be illegal dumping.
- We have single story building and if we chose to develop the property into a multi-story project, which is allowed, this sets up a situation where there will be 86 homeowners complaining that the project doesn't fit in the area. Now, we will be precluded from developing it within the original guidelines due to these 86 homeowners coming up with problems of shadow, parking, etc.
- He referred to a letter sent to the Commission and asked that these issues be addressed.

Public comment was closed.

Commissioner Eaton asked if all the garage spaces were part of the condo sale to the units and do some of the units only have one car garages, etc.?

Mr. Bartlett answered:

- 5 units have a single car garage with approximately 250 square feet of flex space on the same floor. There is an assigned second space that is uncovered adjacent or as close to that unit as possible.
- In the twelve unit building there are 9 of the same type of units that have two garage spaces, although they are separate but covered.
- 36 interior spaces are tandem.
- There will be a homeowner's association that will enforce the use of the garage spaces due to the high density of this project.

Chairperson Toerge then read the rules for extension of hours regarding new agenda items being introduced after 10:30. A vote was taken to extend the time for the last item on the agenda.

Commissioner Eaton asked if the City is facing any deadlines under the Permit Streamlining Act?

Ms. Temple answered no, this is a legislative act and is not subject to the Permit Streamlining Act.

Commissioner Eaton noted his concerns:

- This application needs to be viewed in the context of at least the recommended policies in the airport area land use General Plan update element.
- We may want to wait for the full Roma study which deals with how residential will fit in to the airport area.
- Setbacks - parking- allocation of open space - noise on balconies on the Bristol Street North, may be problematic.

Commissioner Hawkins stated he agrees with the previous concerns adding:

- Planning where this fits with the existing plan and the Roma study;
- CC and R's for the PC text;
- This application may be premature;
- If this project is approved, what happens with the Green Light issues.

Ms. Temple noted the complete charter section 423 analysis is on page 7 and 8.

Commissioner Cole noted:

- Providing in-fill housing is a positive thing.
- Land use issue needs to be discussed.
- Parking is a concern.
- The design looks good.

Commissioner Hawkins asked how many trips are available for other development under the Charter Section 423 analysis.

Ms. Temple answered that is on page 8 in the second chart that shows the cumulative development that has been approved.

Mr. Campbell noted the project would take 86 units out of the 100 trip threshold. We would then track 80% of those 86 for the next ten years against any other general plan amendments requesting residential units in the airport area. The existing land use of a 304 room hotel and this project generates less traffic than that therefore the net increase is zero.

Chairperson Toerge noted:

- Need to look at the affect of the no-street parking and the allocation of visitor parking.
- Noise contours from all sources and potential allowable uses on adjacent commercial properties should be considered in the design of the project on all locations.
- Traffic saving amenities may be offset from its distance from schools, parks and readily available grocer shopping and the like.
- Setbacks are a concern and he would like to see the ratio between the current setbacks and allowable building heights compared to the setbacks and heights of the proposed structure.
- The process for the General Plan update is important.
- The Traffic Phasing Ordinance is important and needs to be reviewed.

Commissioner Tucker noted his concurrence with all previous Commissioners' statements noting that the land use is a threshold issue and it may not be just the change of the use but the intensity of the use as well. He would like more information on what the project will look like with materials board, colors, elevations, wall detail and trees already on the site.

Commissioner McDaniel, noted:

- He is please with the affordable housing aspect of the project.
- Concerned with the tandem parking issue.

- Concern of the neighbors need to be addressed, hopefully prior to the next meeting.

Commissioner Henn noted:

- We need to have a substantially better understanding of where the City is heading with the General Plan in this study area.

Commissioner Tucker asked that the City Attorney's office have the right to review and approve the CC and R's on the property. The CC and R documents should grant to the City the right of enforcement of the parking provisions.

Following a brief discussion on timing of this project along with deliberations on the land use in the airport area, circulation and mobility policies of the General Plan update, it was agreed that the first meeting in December would be the better time to hear this project.

Motion was made by Commissioner Tucker to continue this item to December 8, 2005.

Ayes:	Eaton, Hawkins, Cole, Toerge, Tucker and McDaniel
Noes:	Henn
Absent:	None
Abstain:	None

SUBJECT: Lennar Homes (PA2004-169)
900 Newport Center Drive

ITEM NO. 5
PA2004-169

Lennar Homes proposes to construct 79 residential condominiums on a 4.25 acre site presently developed with tennis courts operated by the adjacent Newport Beach Marriott Hotel. The applicant proposes to construct three buildings that are approximately 65 feet in height. The requested applications would change the General Plan and Local Coastal Land Use Plan land use designations from commercial to Multiple Family Residential. The existing APF zoning is also proposed to be changed to PC (Planned Community) and a Planned Community Development Plan text that would establish use and development regulations is proposed. Implementation of the project also requires a Traffic Study pursuant to the Traffic Phasing Ordinance, Tentative Parcel and Tract Maps for subdivision purposes, and a Coastal Residential Development Permit regarding the provision of affordable housing in accordance with the Zoning Code and Housing Element of the General Plan.

**Recommended
for approval**

Commissioner Tucker recused himself from deliberation on this item.

Ms. Rosalinh Ung gave an overview of the staff report, noting:

Development consists of 79 condominium units with 8 different floor plan options with underground parking structures.

- General Plan amendment/LCP Land Use Plan - the change from APF to Multi-Family Residential is necessary because the proposed residential uses are not permitted in the APF designation.
- The MFR land use designation is appropriate for the project and will be compatible with the surrounding uses.
- The Planned Community Development Plan Text Adoption is a request to rezone

the subject property from APF to the PC District and waiver of 10-acre minimum land area requirement for Planned Community District as the subject property is approximately 4.25 acres in size.

- Tentative Parcel Map is requested to sub-divide the property from the Marriott Hotel complex. The subsequent Tract Map is proposed for the condominium ownership.
- The Traffic Study has been prepared pursuant to the Traffic Phasing Ordinance and concluded that project related traffic does not cause an unacceptable level of service at the studied intersections.
- The Coastal Residential Development Permit is required as the project includes 16 units for affordable housing in accordance with the Municipal Code. The applicant proposes to locate these units off-site within the City limits.
- A Mitigated Negative Declaration has been prepared to evaluate the project with traditional zoning of multiple family residential followed by a thirty day review period from July 15th to August 15th of this year.
Since then it has been determined the most appropriate zoning designation for the property would be Planned Community. An addendum has been prepared to address the change of the zoning designation and is attached to the document for consideration.
- Staff believes the findings for this project can be made and that it provides additional residential opportunities comparable with surrounding area of Newport Center.

Chairperson Toerge asked if the new condominiums would absorb any of the 79 unused allocation. He was answered no.

Mr. Dustin Fuller of David Evans and Associates, responsible for the environmental documents, noted:

- The project will be exporting about 40,000 cubic yards of material, which equates to approximately 80 truck trips per day over a 36 day period, which broken down equals 11-12 truck trips per hour. The total ADT added to the project will be minimum and will not affect traffic impacts.
- The air quality analysis includes mitigation measures that would also include covering the free board on the export material and require cleaning of the streets as the trucks exit.
- We will be adding language in assuming a 30 mile round trip for the fill site as the maximum. The applicant will be looking for something closer. Based on a 30 mile round trip with 80 truck trips we would put a number on the trips. ***'During demolition and excavation daily total haul trucks shall travel no more than a cumulative 2400 miles per day hauling materials from the site to and from the dumping site.'*** Another mitigation measure to be added to addresses a haul truck route. ***'Prior to commencement of demolition and grading of the project, the applicant shall submit to the City calculations showing the proposed travel route for all trucks, the distance traveled and how many daily truck trips that can be accommodated while keeping the cumulative miles traveled***

to below 2400 miles each day. The daily haul truck trips shall not exceed 2400 miles during demolition and excavation activities.

Mr. Harp asked that '**review and approval by the City**' to be included in both new measures.

Chairperson Toerge, referring to page 4 of the Errata, questioned the accuracy of the building coverage of 100% less setback represented in the chart.

Ms. Temple explained that appears to be allowing coverage to the buildable area of the site.

Chairperson Toerge asked if the construction works parking was addressed in the EIR? He was answered, no.

Mr. Fuller noted that generally during construction, the workers park on the site. However, there is no formal analysis.

Ms. Temple stated this is not a matter of environmental review, rather it is a matter for the Building Department and the Public Works Department as the grading plan is approved and the project building permits are approved. If there is a thought there might be a parking problem, we would ask the contractor to identify how that would be managed so there would not be on-street impacts.

Continuing, Chairperson Toerge noted there is a discussion on what to do when the trucks leave the site. Considering the water quality issues, could we specify that sweeping is the means of cleaning the street and disallow hosing down the streets.

Ms. Temple answered yes.

Chairperson Toerge, referring to page 346 of the Mitigated Negative Declaration, asked about the housing stock and vacancy percentage.

Ms. Temple answered there is a very high vacancy rate because of the high number of second homes; turnover in the rental stock, and that is what the Census tells us.

Coralee Newman, Principal of Government Solutions, representing the applicant, noted that the Marriott Hotel has been going through an extensive renovation. As part of that effort they seek to acquire a Residential Development on the property adjacent to the hotel on land utilized as tennis courts. This would provide an opportunity to bring new 'for sale' homes in the Newport Center. She then introduced her team members. She noted that Lennar has reviewed all the conditions in the staff report and mitigation measures and are in agreement to all.

Marice White of Government Solutions, noted the following during a PowerPoint presentation:

- Aerial photo of the site location.
- As part of the Marriott renovation it became apparent that the tennis courts were no longer being used.
- The proposed project is 4.25 acre site with 79 luxury condominiums.

- The proposed project will be going through the Coastal Commission for their determination following approval of the applications.
- This is a unique residential opportunity in Newport Center.
- We are requesting that we have a maximum height of 65 feet while we are allowed up to 375 in the high rise district.
- The FAR on the site is 1.9; which includes the 100% subterranean garage.
- We have 201 spaces provided, 198 required, which is 2 spaces per resident with 1/2 space per guest.
- The guest spaces are equally distributed throughout the garages to coordinate to the units they are intended to serve and are not grouped in one specific area.
- The Negative Declaration was prepared and circulated in June of this year, reviewing a number of areas such as air quality and no significant impacts were identified as a result of the project.
- The surrounding neighbors would be the Colony Apartments across the street, the Marriott on one side, and the country club on the other side.
- We are having on-going discussions with the country club on coordination, sales disclosures and CC and R's protect both the residents and the golf course.

Kevin Buchta, MVE, speaking for the applicant, noted the following on the project site:

- Site is constrained on the Santa Barbara edge by 15-20 feet of grade fall to the golf course edge.
- The building will be stepped up with a 2 and 3 story Type 5 construction over one level of a parking garage.
- The architecture is Mediterranean style with smooth stucco detailing, precasts surrounds on the windows, wrought iron detailing on railings and Juliet balconies and Mediterranean inspired roof details with built up fascias.
- The Santa Barbara edge has the pedestrian linkages to Fashion Island and entries to the buildings. There are wide expanses of glass and expanded decks at the lower level.
- He then explained some of the various unit layouts and floor plans.

Marris White continued:

- This project has been in the planning and design phase for two years.
- It has received review and approval of The Irvine Company.
- It is compatible with the surrounding uses.

- The site has two entrances off Santa Barbara for both residents and guests.
- There are two entrances off the promenade where both residents and guests will park.
- There are several access points from the units where residents and guests can egress to Fashion Island.
- She then noted exhibits views taken from a third story building and how the buildings will look along Santa Barbara, as well as from the golf course.
- They have received many inquiries as to potential buyers.
- This is a 4.25 acre site with nearly 2 acres of open space.

At Commission inquiry, Ms. White noted the applicant has agreed to a condition that they will locate 16 units of affordable housing somewhere in the City of Newport beach. The agreement will be in place approved by the City Attorney by the issuance of the certificate of occupancy.

Commissioner Eaton asked about the parking designation of visitor parking; access restrictions.

Mr. Buchta, referring to the garage plan, showed the visitor parking designations.

Marris White added that residents' parking will be behind gates and that the CC and R's are to be crafted in such a way that restrict residents to only park in those spaces as well as they are not able to lease those spaces out and that guest parking is specifically marked and will be designated as 48 or 72 hour stipulation for guest parking. Guest parking will not be behind the gates, residents' parking will be gated. The parking levels will be clearly marked with what building a driver is going to and spaces and levels will have signage or something on the pillars. Guests will have some type of phone security box to be buzzed up into the building.

Commissioner Cole asked what the feature that separates the golf course from the property.

Ms. White answered that the building itself in a lot of the places acts as a fence; where the building is open there will be a fence between the golf course and the property. Depending on what the edge looks like, some of those units are 3-4 feet above grade as it is so they likely won't need a fence, but, in other places the golf course has expressed their desire to have a fence. We are working on something that will be amenable to both Lennar and the golf course and nice for the residents. The buildings are approximately 15 feet back from the property line.

At Commission inquiry, Ms. White noted:

- They will be working on sales disclosures and CC and R's with regard to the errant golf ball and the safety rules.
- The architects are looking at special types of window materials.
- The rotunda effect are end units and allow for floor-to ceiling windows in the end

units at that location.

- There is no common room as the residents will have the use of the Marriott.

Public comment was closed.

Chairperson Toerge asked:

- Clarified the terminology used in the draft resolution.
- PC regulations - segregate or include a breakdown of the livable floor area and the parking square footage so that it is clearly shown why they are over the FAR.
- Condition 39 looks to be describing a problem but not a condition.
- Condition 81 - idling of construction vehicles for 5 minutes only then they are to be shut off.

Ms. Temple answered that the FAR reflects the total of the building and we establish the suggested FAR in the Planned Community text to support the proposed project.

Ms. Ung noted that the condition was drafted such that the applicant has the option to either re-locate or move it further away from that. It was agreed for condition 81.

Commissioner Henn clarified in the agreement for the affordable housing, those units will be identified and available by the time a certificate of occupancy is issued for the project.

Ms. Temple answered staff would want this at a minimum to be assured that they were actually in place before the City would allow occupancy.

Commissioner Hawkins noted this should be made a condition.

Mr. Harp noted that this will be incorporated into the agreement and add it to condition 5.

Commissioner Hawkins noted condition 15. The parking plan needs review and approval of the Public Works Department and City Traffic Engineer.

Mr. Edmonston answered that condition 46 covers review by the Traffic Engineer.

Motion was made by Chairperson Toerge recommend approval of General Plan Amendment No. 2004-005, Local Coastal Plan Land Use Plan Amendment No. 2005-001, Planned Community Development Plan No. 2005-003, Tentative Parcel Map No. 2005-014, Tentative tract Map No. 2004-004 (16774), Traffic Study No. 2005-002, and Coastal Residential Development No. 2005-004 to the City Council to the City Council and approve the Mitigated Negative Declaration OA2004-169 subject to the findings and conditions as modified.

Yes:	Eaton, Hawkins, Cole, Toerge, McDaniel and Henn
Noes:	None
Absent:	Tucker
Abstain:	None

ADDITIONAL BUSINESS:**ADDITIONAL
BUSINESS**

- City Council Follow-up - none provided due to late hour.
- b) Report from Planning Commission's representative to the Economic Development Committee - none provided due to late hour
- c) Report from Planning Commission's representatives to the General Plan Update Committee - none provided due to late hour
- d) Report from Planning Commission's representative to the Local Coastal Plan Certification Committee - none provided due to late hour
- e) Report from Planning Commission's representative to the Zoning Committee - none provided due to late hour.
- f) Matters which a Planning Commissioner would like staff to report on at a subsequent meeting - Commissioner Cole discussed the meeting that was held with the City Attorney, Chairperson Toerge, Jeff Goldfarb of Rutan and Tucker and Building Director Jay Elbetta regarding the Narconon intensification use and the ramifications of both Federal and State legislation that govern these facilities.
- g) Matters which a Planning Commissioner may wish to place on a future agenda for action and staff report - none.
- Project status - none provided due to late hour.
- i) Requests for excused absences - Commissioner Cole will be late at the next meeting and Chairperson Toerge will be leaving early.

ADJOURNMENT: 12:15 a.m.**ADJOURNMENT**

BARRY EATON, SECRETARY
CITY OF NEWPORT BEACH PLANNING COMMISSION

EXHIBIT 4

Attachment 1

RESOLUTION NO. 2006- 2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING MITIGATED NEGATIVE DECLARATION (SCH NO. 2005-071067) AND APPROVING GENERAL PLAN AMENDMENT NO. 2004-005, LOCAL COASTAL PROGRAM LAND USE PLAN AMENDMENT NO. 2005-001, TENTATIVE PARCEL MAP NO. 2005-014, TENTATIVE TRACT MAP NO. 2004-004 (16774), TRAFFIC STUDY NO. 2005-002 AND COASTAL RESIDENTIAL DEVELOPMENT PERMIT NO. 2005-004 FOR PROPERTY LOCATED AT 900 NEWPORT CENTER DRIVE (PA 2004-169)

WHEREAS, an application was filed by Lennar Homes with respect to property located at 900 Newport Center Drive, and legally described as Parcel 1, as per map filed in Book 75 pages 33 and 34 of parcel maps, in the office of the County Recorder to construct 79 residential condominiums on a 4.25-acre site presently developed with tennis courts operated by the adjacent Newport Beach Marriott Hotel. The applicant requests approval of: a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the 4.25-acre site from Administrative, Professional & Financial Commercial to Multiple-Family Residential; an Amendment of the 2004 LCPLUP to change the land use designation from Visitor-Serving Commercial (CV-B) to Medium Density Residential C (RM-C); a Zone Change to rezone the subject property from APF to the PC District; adopt a Planned Community Development Plan to establish permitted use and development regulations; consider a waiver of the 10-acre minimum land area requirement for Planned Community District adoption; a Parcel Map to subdivide the subject property from the hotel development for financing and development purposes; a Tract Map for the condominium ownership (79 residential units); a Traffic Study pursuant to the Traffic Phasing Ordinance (TPO) and a Coastal Residential Development Permit regarding the provision of affordable housing in accordance with the Municipal Code and the General Plan Housing Element.

WHEREAS, on November 3, 2006, the Planning Commission held a noticed public hearing in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California at which time the project applications, the Mitigated Negative Declaration and comments received thereon were considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Planning Commission at the hearing. With a vote of 6 ayes (one recused), the Planning Commission recommended approval of the above-mentioned applications to the City Council.

WHEREAS, the property is located in the Block 900 - Hotel Plaza of the Newport Center (Statistical Area L1) of the Land Use Element and has a land use designation of Administrative, Professional & Financial Commercial (APF) and zoned APF (Administrative, Professional, Financial).

WHEREAS, pursuant to Section 20.94 of the Newport Beach Municipal Code, the City Council held a noticed public hearing on November 22, 2005, which was continued to December 13, 2005 without testimony, to consider the proposed applications and the recommendations of the Planning Commission.

COASTAL COMMISSION
NPB 1-06 Part A

EXHIBIT # 1

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WHEREAS, a General Plan Amendment and an Amendment of the 1990 Local Coastal Plan Land Use Plan (LCPLUP) to change the land use designations of the site from Administrative, Professional & Financial Commercial to Multiple-Family Residential is necessary as the proposed residential use is not permitted in the APF designation. A change in land use would result in a 4.25-acre reduction in land available to be potentially used for office uses consistent with the APF designation. However, within the Newport Center, there is approximately 200 acres designated APF and the two percent (2%) reduction proposed by the project is not a significant reduction.

WHEREAS, the residential condominium project is consistent with the proposed Multi-Family Residential land use designation. The proposed residential condominium project would be compatible with the residential developments to the south and northeast of the site. The proposed project is viewed as incompatible with the office uses across Santa Barbara Street and is also compatible with the adjacent hotel and golf course.

WHEREAS, the 2004 LCP Land Use Plan designates the site for Visitor Serving Commercial uses. This designation was applied due to the existing use of the Marriott Hotel complex. A change in land use designation from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential C) is necessary for the proposed residential development. The change in land use designation will reduce the land available for visitor-serving commercial uses by 4.25 acres. Although this reduction in area would occur, the opportunity to construct the remaining hotel room entitlement of 79 rooms would not be lost and they could be constructed nearby within a portion of Newport Center within the Coastal Zone.

WHEREAS, Section 30250(a) of the California Coastal Act (CCA) provides criteria for the location of new development. The Coastal Act provides for the protection of coastal resources by requiring that new development be located in close proximity to existing development with available public services to minimize the impacts associated with the extension of infrastructure and services. The project is located within Newport Center, which is a development area with all public services (utilities, roads, police, fire etc.) presently provided.

WHEREAS, Section 30262(4) requires new development within the Coastal Zone to provide adequate parking facilities or provide substitute means of serving the development with public transportation. The proposed development provides an adequate number of on-site parking spaces. The project also will be conditioned so that the parking structures will have adequate dimensions, clearances, and access to insure their proper use.

WHEREAS, Section 30212, requires public access must be provided from the nearest public roadway to the shoreline and along the coast in new development. The subject property is not adjacent to the ocean or bay; therefore, coastal access easements are not required.

WHEREAS, Section 30222 requires the use of private land suitable for visitor-serving commercial recreational facilities for coastal recreation must have priority over private residential, general industry, or general commercial development. Although, the change in land use designation will reduce the land available for visitor serving commercial uses by 4.25 acres; the opportunity to construct the remaining hotel room entitlement of 79 rooms would not

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be lost and they could be constructed nearby within the portion of Newport Center that is located within the Coastal Zone.

WHEREAS, the City's General Plan indicates that the City shall maintain suitable and adequate standards for landscaping, sign control, site and building design, parking and undergrounding of utilities and other development standards to ensure that the beauty and charm of existing residential neighborhoods are maintained, that commercial and office projects are aesthetically pleasing and compatible with surrounding land uses. The proposed PC Text contains one classification of land use and provides the development standards for the entire subject property. The draft PC Text contains development regulations for the subject site which includes definitions and information concerning requirements for development site coverage, building height, setbacks, off-street parking, vehicular access, signing, lighting, storage, and screening and landscaping to ensure that the project would be compatible with the surrounding land uses consistent with the objectives of the Land Use Element.

WHEREAS, to be consistent with the Housing Programs 2.2.1 and 2.2.3 of the City's Housing Element, the project is required to provide a minimum of 20% of the total units (16 units) for affordable income households for a minimum of 30 years. The applicant is requesting that the affordable housing provision be off-site, at an approved location within the City, as affordable housing is not feasible at the subject site. According to the applicant, the project's Home Owner's Association fees are expected to be a minimum of \$1,500 per month, which is a substantial multiple of the statutory mortgage payment limits for affordable housing when combined with acquisition costs and taxes. With this provision, the applicant will be required to enter into an agreement with the City to provide said units off-site within the City's limits. The agreement will be reviewed and approved by the City Attorney and will be executed prior to the recordation of tract map or the issuance of a building or grading permit for the proposed project.

WHEREAS, an approval of the project is implementing Housing Program 3.2.4 that allows the City to consider and approve rezoning of property from non-residential to residential uses when appropriate to extend housing opportunities to as many renter and owner occupied households as possible in response to the demand for housing in the City.

WHEREAS, Charter Section 423 requires all proposed General Plan Amendments to be reviewed to determine if the square footage, peak hour vehicle trip or dwelling units thresholds have been exceeded and a vote by the public is required. This project has been reviewed in accordance with Council Policy A-18 and a voter approval is not required as the project represents an increase of 39 - A.M. and 35 - P.M. peak hour trips for a new 79 dwelling unit development. These increases, when added with 80% of the increases attributable to two previously approved amendments, result in a total of 47 - A.M. peak hour trips and 43.8 - P.M. peak hour trips; 3,640 square feet of non-residential floor area and 79 dwelling units do not cumulatively exceed Charter Section 423 thresholds for a vote.

WHEREAS, the project is located within Newport Center where public services and infrastructure are available to serve the proposed development. Additionally, all applicable improvements required by Section 19.28 (Subdivision Improvements) of the Subdivision Code are to be satisfied by the applicant.

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WHEREAS, the parking requirement for a multiple-family residential zoned project is two spaces per unit, including one covered, plus 0.5 spaces for guest parking for developments of four or more units. A total of 158 spaces are required for the residences and a minimum of 40 spaces are required for guest parking. A total of 201 spaces are proposed to serve the project, and therefore, the project meets the parking requirements of the Municipal Code. In addition to the provision of adequate on-site parking, the project is conditioned that the parking designs meet all City requirements regarding parking stall width, depth, grade, and aisle-turning radii.

WHEREAS, pursuant to Section 19.12.070 of the City Subdivision Code, the following standard findings must be made to approve the Tentative Parcel Map and Tract Map.

1. The proposed Tentative Maps are consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act. Conditions of approval have been included to ensure compliance with Title 19 and the Subdivision Map Act.
2. Lot 1 of the Parcel Map is being proposed for the residential development and is of sufficient size for the intensity of development and the site is physically suitable for the project. The project provides an adequate number of parking spaces as required by the Zoning Code. Access to the site can be provided through the proposed driveways along Santa Barbara Drive. Additionally, no earthquake faults were found on-site. There is no known incidence of landslide, lateral spreading, subsidence, liquefaction, or collapse on-site or near the site; however, existing soils will be required to be excavated and re-compacted to create stable soil conditions to support the proposed development. The implementation of mitigation measures identified in the draft Mitigated Negative Declaration would reduce any potential impacts. The site is, therefore, physically suitable for development.
3. Lot 2 of Parcel Map is proposed to retain a General Plan land use designation of Administrative, Professional & Financial Commercial. Lot 2 is not proposed for new development and this parcel will continue to be used as a hotel and it is of sufficient size to support its existing use.
4. Under the proposed Parcel Map, Lot 2 does not include any improvements and the development of Lot 1 as a residential use is not expected to cause serious public health problems given the use of typical construction materials and practices. No evidence is known to exist that would indicate that the proposed subdivisions will generate any serious public health problems. All mitigation measures will be implemented as outlined in the Mitigated Negative Declaration to ensure the protection of the public health.
5. No public easements for access through, or use of, the property have been retained for the use by the public at large. Public utility easements for utility connections that serve the project site are present and will be modified, if necessary, to serve the proposed project.

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6. Title 24 of the Uniform Building Code requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and field inspection processes.
7. The proposed subdivision facilitates the creation of 79 new residential units. The provision of 16 affordable units will assist the City in meeting its housing needs as identified in the Regional Housing Needs Assessment. Public services are available to serve the proposed development of the site and the Mitigated Negative Declaration prepared for the project indicates that the project's potential environmental impacts are expected to be less than significant.
8. Waste discharge into the existing sewer system will be consistent with residential use of the property which does not violate Regional Water Quality Control Board (RWQCB) requirements.
9. The proposed subdivision is entirely within the coastal zone and the site subject to the tentative maps is not presently developed with coastal-related uses, coastal-dependent uses or water-oriented recreational uses. The project is consistent with the City's 1990 Local Coastal Program Land Use Plan and the recently modified and approved LCPLUP that will replace the 1990 certified LUP. The subject site to be subdivided does not abut the ocean or bay, and does not provide public access to coastal resources; therefore, no impacts to coastal access are anticipated. Recreation policies of the Coastal Act require that site resources for water-oriented recreational activities that cannot be supplied inland must be protected. These policies prioritize water-oriented recreational activities over other land uses and encourage aquaculture and water-oriented recreational support facilities. The project site proposed to be subdivided is not suitable for water-oriented recreational activities due to its size and location, approximately 1.5 miles from the shoreline.

WHEREAS, the entire project is located within the Coastal Zone and requests the construction of 79 units. Pursuant to Chapter 20.86 of the Zoning Code, when a project proposes to create 10 or more units within the coastal zone, affordable housing must be included within the project unless it can be determined infeasible. The Housing Element of the General Plan determines the number and type of affordable housing that is required. In accordance with the Housing Element, 16 affordable housing units would be required to be provided.

WHEREAS, a Traffic Study has been prepared by Kunzman Associates under the supervision of the City Traffic Engineer pursuant to the TPO and its implementing guidelines (Appendix D of the Mitigated Negative Declaration), CEQA analysis for cumulative projects and intersection capacity utilization (ICU), and General Plan analysis. The project will result in a net increase of 330 new average daily trips, 42 vehicle trips during morning (AM) peak hour and 39 vehicle trips during the afternoon (PM) peak hour. The study concluded that the proposed project will not cause a significant impact at the study area intersections; therefore, no improvements are required at these intersections.

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WHEREAS, an Initial Study and Mitigated Negative Declaration (MND) have been prepared in compliance with the Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. The Draft MND was circulated for public comment between July 15 and August 15, 2005. Comments were received from the California Coastal Commission, Airport Land Use Commission and Mr. Terek Saleh of Costa Mesa. The contents of the environmental document, including comments on the document, have been considered in the various decisions on this project. Since then, it was determined that the most appropriate zoning designation for the property would be PC (Planned Community). This new zoning designation does not affect the size, scope or design of the project that would potentially create additional physical environmental impacts. As result, it has been determined that the MND adequately describes the potential impacts of the project and does not require additional recirculation and review of the MND. An addendum has been prepared to address the change in the zoning designation and made it a part of the MND.

WHEREAS, on the basis of the entire environmental review record, the proposed project will have a less than significant impact upon the environment and there are no known substantial adverse effects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified are feasible and reduce potential environmental impacts to a less than significant level. The mitigation measures are applied to the project and are incorporated as conditions of approval.

WHEREAS, General Plan Amendment No. 2004-005, Planned Community Development Plan No. 2005-003, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004 shall only become effective upon the approval of LCP Land Use Plan Amendment No. 2005-001 by the California Coastal Commission.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newport Beach does hereby adopt Mitigated Negative Declaration (SCH No. 2005-071067); approve General Plan Amendment No. 2004-005 by amending the Land Use Element, Statistical Area L1, Block 800-Hotel Plaza and the Estimated Growth for Statistical Area L1 Table of the General Plan as depicted in Exhibit "A" and Land Use map in Exhibit "B", LCP Land Use Plan Amendment No. 2005-001 by revising Land Use map as depicted in Exhibit "C", Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004, subject to the conditions of approval listed in Exhibit "D"


EX. 1
6/7

This resolution shall take effect immediately upon adoption. Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 10th day of January 2006 by the following vote to wit:


AYES, COUNCIL MEMBERS Heffernan, Selich, Rosansky, Rideaway, Daigle,

NOES, COUNCIL MEMBERS Nichols, Mayor Webb None

ABSENT, COUNCIL MEMBERS None


MAYOR

ATTEST:


CITY CLERK



EX. 1
7/7

RESOLUTION NO. 2006- 26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DECLARING THAT LOCAL COAST PROGRAM LAND USE PLAN AMENDMENT NOS. 2005-001 AND 2006-001 ARE INTENDED TO BE CARRIED OUT IN FULL CONFORMANCE WITH THE CALIFORNIA COASTAL ACT

WHEREAS, on January 10, 2006, the City Council approved Coastal Land Use Plan Amendment No. 2005-001 changing the coastal land use designation of a 4.25-acre site located at 900 Newport Center Drive from CV-B (Visitor-Serving Commercial) to RM-C (Medium Density Residential) allowing the development of 79 residential condominiums.

WHEREAS, on February 14, 2006, the Council approved Coastal Land Use Amendment No. 2006-001 changing the coastal land use designation of a 14.25 acre site located at 4850 West Coast Highway from RM-B (Medium Density Residential) to OS (Open Space) to facilitate the development of a public park.

WHEREAS, the approval of these two amendments should have included a finding that the amendments are intended to be carried out in full conformance with the California Coastal Act and they should have specified when the amendments become effective.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 are intended to be carried out in full conformance with the California Coastal Act.

Section 2. Coastal Land Use Plan Amendment Nos. 2005-001 and 2006-001 shall take effect automatically upon Coastal Commission action unless the Coastal Commission proposes suggested modifications. In the event that the Coastal Commission proposes revisions, the LCP Land Use Plan Amendments shall not take effect until the City Council adopts the Commission suggested modifications.

Section 3. This resolution shall take effect immediately upon adoption.

Passed and adopted by the City Council of Newport Beach at a regular meeting held on the 28th day of March 2006 by the following vote to wit:

AYES, COUNCIL MEMBERS Curry, Selich, Rosansky, Ridgeway,
Daigle, Nichols, Mayor Webb

NOES, COUNCIL MEMBERS ---

ABSENT, COUNCIL MEMBERS ---

MAYOR

ATTEST:

Lavonne M. Harkless

CITY CLERK



COASTAL COMMISSION
NPB 1-06 Part A
EXHIBIT # 2
PAGE 1 OF 2

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**T 14a**

June 21, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District (Orange County)
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst

SUBJECT: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06
Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums)

SUMMARY OF STAFF REPORT**DESCRIPTION OF THE SUBMITTAL**

The amendment that is the subject of this report was submitted as part of a package with other Land Use Plan (LUP) amendments. This report deals only with "Part A" of the amendment. Part A of the amendment consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. (Part B of the amendment was acted on separately at the Commission's July 2006 hearing, and Part C was retracted, in part because the City Council had not authorized its original submittal.) The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property. A corresponding coastal development permit application (5-07-085, Lennar) has been submitted and will be considered at a subsequent hearing.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 3.

The major issues raised by this amendment request are adequate provision of visitor-serving commercial development and public access. The proposed land use designation change from Visitor-Serving Commercial to Medium Density Residential would have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. However, with the adoption of the suggested modifications, which include a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land, the proposed land use designation change would not have an adverse affect on priority

NPB-MAJ-1-06 (Part A)

visitor-serving opportunities in the area. The mitigation fee shall be for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. This mitigation fee would fund Phase 2 of the ongoing Crystal Cove Alliance restoration effort of the Historic District at Crystal Cove State Park and which is presently contemplated to provide for the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), Cottage 5, Cottage 45, the garages and creek restoration.

ADDITIONAL INFORMATION

For further information, please contact Ryan Todaro at the South Coast District Office of the Coastal Commission at (562) 590-5071. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. Homer Bludau is the contact person for the City of Newport Beach, and he may be reached by calling (949) 644-3000.

EXHIBITS

1. City Council Resolution No. 2006-02 approved January 10, 2006
2. City Council Resolution No. 2006-26 approved March 28, 2006
3. Vicinity Map (Newport Center)
4. Land Use Map
5. Vicinity Map (Crystal Cove State Park)
6. Site Map (Crystal Cove State Park)
7. City of Newport Beach letter

**I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH
LOCAL COASTAL PROGRAM AMENDMENT 1-06 (PART A)**

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB MAJ 1-06 Part A for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *"The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission."*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government's resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982 and comprehensively updated October 13, 2005. The subject amendment was initially submitted by the City of Newport Beach on March 6, 2006. On March 15, 2006, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. City staff submitted the information on April 14, 2006. On May 18, 2006, Coastal Commission staff notified the City that the amendment request was complete. The Commission approved a request for a one-year (1) time extension of the amendment on June 13, 2006, which gives the Commission until July 13, 2007 to act on this submission. Part B of the amendment request, which involved a change in the

land use designation of another parcel from Medium Density Residential to Open Space, was approved by the Commission on July 12, 2006. Part A of the amendment request is now being submitted for Commission action. Part A involves a change in land use designation at 900 Newport Center Drive from Visitor-Serving Commercial to Medium Density Residential.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved this segment of the Land Use Plan amendment request (Part A) through a City Council public hearing on January 10, 2006. The item was originally scheduled for the Council hearing of November 22, 2005, but the item was continued to the December 13, 2005 hearing and finally approved on January 10, 2006. It was approved through City Council Resolution No. 2006-02, which approved General Plan Amendment No. 2004-005 and Local Coastal Plan Amendment 2005-001 (Exhibit 1). Prior to either the City Council approving the LUP amendment request, or the Planning Commission voting to recommend that the City Council do so, the Planning Commission held a public hearing on November 3, 2005. Notice was provided for both entities' hearings. Notice of the City Council's public hearing was mailed and posted on November 14, 2005 and published in the local newspaper on November 12, 2005. The City Council approved a subsequent resolution (Resolution No. 2006-26) on March 28, 2006 to correct procedural deficiencies in the original resolution related to the Coastal Act requirements (Exhibit 2).

One letter of opposition was received at the local level. The letter expresses concerns about increased density at the subject site. No oral comments were received during the public hearings held at the local level.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted.

Suggested Modification #1

Add the following new Land Use Plan policy to Chapter 2, Section 2.3 (Visitor-Serving and Recreational Development), Sub-section 2.3.1 (Commercial) of the Coastal Land Use Plan after existing policy number 2.3.1-7:

- 2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses

at Crystal Cove State Park. The mitigation fee shall be in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.

The addition of this new policy may affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Suggested Modification #2

The City shall submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. Approximately 9.54 acres of Visitor-Serving Commercial (VC) would remain on site in Newport Center after the land use designation change. The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property.

B. Findings For Denial

The Commission hereby finds and declares as follows:

Site Description and Land Use Designation

The proposed land use redesignation will affect only one site—900 Newport Center Drive in the City of Newport Beach, Orange County. The 4.25-acre site is located in the Newport Center/Fashion Island area of the City, inland of Pacific Coast Highway (Exhibit 3). The site is currently operated as a private tennis club used by members and guests of the Newport Beach Marriott Hotel. There are eight outdoor tennis courts, a clubhouse and ancillary uses on the property. The property owner proposes to subdivide the subject site from the larger hotel parcel and develop a 79-unit condominium project.¹

The site is currently designated Visitor-Serving Commercial (CV-B) in the City's Certified Land Use Plan, as depicted in Exhibit 4. The site is surrounded by a golf course to the west and north, hotel development to the south, and commercial offices to the east.

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

¹ Coastal Development Permit Application 5-07-085 (Lennar), which seeks authorization to develop the condominium project, will be considered by the Commission at a subsequent hearing.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Proposed Change in Land Use Designation

The proposed amendment (NPB MAJ 1-06, Part A) involves a request to change the land use designation of a 4.25-acre area of the Newport Beach Marriott Hotel from Visitor Serving Commercial to Medium Density Residential at 900 Newport Center Drive. No other properties are subject to the proposed land use change.

The proposed change will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. The City indicates, however, that the loss of CV-B designated land at this location will not have an adverse affect on visitor-serving commercial or recreational activities.

According to the amendment request, "[t]he property is not located in close proximity to coastal resources, coastal recreational use or the water and the change in land use does not impact the adjacent visitor serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity." Although the tennis courts are not typically considered a "coastal dependent" activity, tennis is a recreational activity, and the site is part of a larger commercial facility (Marriott Hotel) that serves visitors to the coast. Thus, although currently operated as a private tennis club serving only members and guests of the Newport Beach Marriott Hotel, the club is nevertheless a visitor-serving recreational offering. In addition, the hotel is located in close proximity to popular visitor destinations, such as the Newport Dunes, Balboa Island and the beach. The site is located in a highly visible, well-traveled location and could potentially support some form of commercial and/or recreational development in the future. Re-designation of the site for residential development now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site.

The City states that the loss of this visitor-serving commercial site as a result of the requested amendment would not significantly reduce the amount of visitor-serving land in the City. The City concludes that the project represents a 2% reduction in visitor serving uses based on a table showing the portion of land currently designated as visitor serving commercial and what will remain after the 4.25-acre site is re-designated. The table is replicated below.

Visitor Serving Commercial Designation	Amount of Land
CV-A (0.5—0.75)	7.65 acres
CV-B (0.5—1.25)	42.90 acres
Newport Coast Planned Community	153.00 acres
CITYWIDE TOTAL:	203.55 acres
Less project	-4.25 acres
REMAINING CITYWIDE TOTAL:	199.30 acres
	(2% loss of CV-B)

The City included the Newport Coast Planned Community in the above-referenced tabulation. However, Newport Coast is covered by a segment of the County of Orange certified LUP and is not within the boundary of the City of Newport Beach certified LUP. As such, the 153.00 acres of visitor serving commercially designated area referred to in the table is not covered by the LUP that is the subject of the current amendment request. In actuality, the 4.25-acre loss represents an 8.4% $[4.25/(7.65+42.90)]$ --not 2%-- reduction in visitor-serving land in the portion of the City covered by this LUP.

In addition, the subject site is one of only five sites designated Visitor-Serving Commercial (CV) in the City's certified LUP. Many land uses that are in fact visitor-serving are located within the General Commercial (CG) or Neighborhood Commercial (CN) designation and could thus cease to provide a visitor-serving function. According to the LUP, *[t]he CV designation is intended to provide for accommodations, goods, and services intended to primarily serve the needs of visitors of Newport Beach.* Hotels, and their ancillary development, clearly fit this designation and should be protected consistent with Section 30222 of the Coastal Act. The LUP includes policies that encourage visitor-serving and recreational developments that provide public recreational opportunities. Although the tennis courts are part of a private club, they are available for use by hotel guests. Hotel guests are typically members of the public that are visitors to the area.

The agent for the corresponding CDP application states that the tennis courts are underutilized and replacing the courts *"does not remove a publicly accessible, widely-used recreation facility from the coastal zone."* The Commission acknowledges that the property owner is in no way obligated to retain the tennis court use of the site. However, under the current land use designation, the site can only be developed with uses allowed under the CV designation. Commercial development of the site could serve potential visitors to the coast. The location is conducive to commercial recreational development and consistent with the adjacent hotel use and the nearby commercial development. Residential development at the subject site would serve no purpose to members of the visiting public and could potentially establish a precedent for residential conversions in the other CV designated areas.

As submitted, the proposed land use conversion proposed as Part A of the City's amendment request is inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be *"protected, encouraged, and, where feasible, provided."* The proposed amendment will also have an adverse affect on the priority *"visitor-serving commercial recreational facilities"* to be provided under

Section 30222 of the Coastal Act. Therefore, Part A of the amendment must be denied, as submitted.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Mitigation to Replace the Loss of Visitor-Serving Recreation

In order for the proposed land use conversion from Visitor-Serving Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal

development permit application (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently, according to the applicant, there are 532 rooms with a 75% occupancy).

Ideally, the loss of area designated for visitor serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor serving use. The applicant (Lennar) for the corresponding coastal development permit application undertook an extensive search for potential visitor-serving properties within the coastal zone in Newport Beach to mitigate for the change in land use. In reviewing sites of similar size, the applicant determined that no properties were suitable, the result of Newport Beach being nearly built-out. In addition, the applicant determined that the acquisition of individual parcels totaling 4.25 acres was not an attractive prospect; while residential property could be acquired, this would result in sporadic rezoning, incompatible uses adjacent to existing uses and proved economically unfeasible given the property values in Newport Beach.

As a result, Lennar, in consultation with the City, proposed an alternative; to pay a fee to mitigate for the loss of visitor-serving land. The proposal is to provide funding for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars). This mitigation fee would off-set the loss of the priority land use in Newport Center and provide funding for Phase 2 of the ongoing effort by State Parks and their concessionaire, Crystal Cove Alliance, to restore the Historic District within Crystal Cove State Park. Phase 2 is presently contemplated to include the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), overnight accommodations in Cottage 5, Cottage 45, and the garages and creek restoration (Exhibit 6). Therefore, the Commission is requiring a suggested modification that would implement this alternative. Suggested Modification #1 would require the City to add a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land. The policy includes provisions to adjust the mitigation fee to account for inflation. Implementation of the mitigation requirement would be carried out through the coastal development permit process.

The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, which is located along the southeast coast of the City of Newport Beach. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920's and 1930's nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early 20th century Southern California coastal development.

California State Parks has completed Phase I of the restoration of the Historic District, which provides cottages for visitor services, educational and community programs, a restaurant, and 13 cottages for overnight use by the public. Cottages available for

overnight rental include studios, one- and two-bedroom houses, and hostel-style dormitories.

Restoration of these historic cottages represents a significant opportunity for lower cost visitor-serving accommodations and associated educational and visitor uses at Crystal Cove State Park, which has become a popular destination of statewide significance for the public, especially since some of the cottages became available for overnight use. Only 22 of the 46 historic cottages have been restored to date. Crystal Cove Alliance, the non-profit cooperating association and concessionaire benefiting Crystal Cove State Park, is currently raising funds to restore the remaining 24 cottages for visitor-serving and overnight accommodation uses. With funding, restoration can begin immediately.

Revised Coastal Land Use Plan Map

Since the proposed amendment would change the land use designation of the 4.25 acre site, the Coastal Land Use Plan Map would need to be updated. Therefore, the Commission is requiring suggested modification #2, which would require the City to submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

Conclusion

The proposed amendment, as modified through the suggested modifications, is consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" In addition, the proposed amendment, as modified through the suggested modifications, would not have an adverse effect on the priority "*visitor-serving commercial recreational facilities*" to be provided under Section 30222 of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA. As part of the City's review of this project, a Mitigated Negative Declaration (MND) was prepared for the proposed project and found that with mitigation, the project's environmental impacts would be reduced to less than significant levels.

CITY OF NEWPORT BEACH CITY COUNCIL STAFF REPORT

Agenda Item No. S23
July 24, 2007

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Robin Clauson, City Attorney
(949) 644-3131, rclauson@city.newport-beach.ca.us

Sharon Wood, Assistant City Manager
(949) 644-3222, swood@city.newport-beach.ca.us

SUBJECT: Affordable Housing Implementation Plan and Memorandum of Understanding
Santa Barbara Condominiums (PA2004-169)

ISSUES:

1. Should the Santa Barbara Condominium project be subject to the policies in the 2006 Housing Element and Ordinance No. 2007-6 regarding development agreements?
2. Is payment of \$5,000,000 to the City an appropriate public benefit in consideration for application of the 2006 Housing Element and vesting of development rights?

RECOMMENDATION:

1. Adopt the attached Resolution Approving an Affordable Housing Implementation Plan (AHIP) for Lennar Homes Santa Barbara Condominiums and a Memorandum of Understanding Between Lennar Homes of California, Inc. and City of Newport Beach (PA2004-169).

DISCUSSION:

On January 10, 2006, the City Council approved an application made by Lennar Homes for the development of 79 condominiums on a 4.25-acre site that presently is developed with an outdoor tennis complex operated by the Newport Beach Marriott Hotel located at 900 Newport Center Drive.

Affordable Housing:

The Resolution approving the project includes the following condition with regard to affordable housing.

5. The applicant shall provide a minimum of 20% of the total units (16 units) for affordable income households in accordance with Housing Programs 2.2.1 and 2.2.3 of the Newport Beach Housing Element. The applicant shall enter into an agreement with the City to provide said units, which

units may be provided off-site, at an approved location within the City. These units shall be identified in the agreement and constructed and completed prior to the issuance of any certificate of occupancy for the project. The agreement shall be reviewed and approved by the City Attorney and shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed subdivision.

Lennar began working with City staff to meet the Housing Element requirement then in effect, that 20% of new units should be provided for lower income households, shortly after submittal of their application. After having no success in finding sites available to develop new affordable units, Lennar appeared before the City Council's Affordable Housing Task Force to discuss purchase of covenants on existing affordable units to extend the term of their affordability, and received Task Force support for that approach. Lennar identified one apartment complex with a covenant to expire in 2005, but was unsuccessful in reaching agreement with the apartment owner to extend the covenant. Lennar then explored payment of an in-lieu fee to the City, but the Housing Element specifically required the provision of units as the affordable housing requirement for projects with more than 50 units. Lennar's next effort was to identify existing market rate apartments, for which they could purchase covenants to convert them to affordable units. They investigated four properties that did not work out before finding Newport Courtyard and 1128-1142 Rutland Road, which is now proposed to meet their affordable housing requirement.

Newport Courtyard is a 12-unit apartment complex, and Condition 5 requires 16 affordable units. However, during the 17 months since City Council's approval of the Santa Barbara project (during which time Lennar has been seeking Coastal Commission approvals) the City adopted a new Housing Element as part of the General Plan update in 2006. Because of the opportunities for housing development that were added to the Land Use Element, the Housing Element was changed to set a goal 15% of all new units be affordable, and to require that an AHIP be prepared for projects with more than 50 units. The AHIP is to specify how the development will meet the City's affordable housing goal. Lennar appeared before the Affordable Housing Task Force again on May 22, 2007. The Task Force supported Lennar's compliance with the current Housing Element in satisfaction of Condition 5, specifically the purchase of covenants to restrict income and rent on the 12 units to moderate income levels for 30 years.

The attached AHIP describes the affordable housing project, renovations that will be completed, the income and rent limits that will be implemented, the term of the limits and compliance with the Housing Element. If the City Council approves the AHIP, an Affordable Housing Agreement among the City, Lennar and the property owner will incorporate the AHIP provisions and set forth additional details such as tenant screening and selection and annual monitoring. As required in Condition 5, this agreement will be reviewed and approved by the City Attorney and recorded prior to the recordation of the final tract map on the Santa Barbara project or the issuance of any permit for that project.

Memorandum of Understanding:

In addition to amending the Housing Element during the time that the Santa Barbara project was before the Coastal Commission, the City Council adopted an amendment to the Municipal Code regarding development agreements as one of many means of implementing the updated General Plan. Development agreements are now required for projects that require a legislative act (such as an LCP amendment) and include more than 50 residential units. The Santa Barbara project meets these criteria, and Lennar is willing to comply with the new development agreement

requirements, as they have requested that the City apply the new Housing Element provisions.

The proposed Memorandum of Understanding establishes the City's and Lennar's agreement to prepare a development agreement expeditiously, and outlines the provisions to be included in the development agreement. Those provisions are as follows:

1. Lennar will pay the City \$5,000,000 as part of the development agreement as a public benefit to the city. This amount is in addition to the \$5,000,000 mitigation fee imposed by the Coastal Commission that is the subject of Agenda Item 18.
2. The City will expeditiously review the Affordable Housing Agreement to implement the AHIP, and will provide expedited review of development plans for the Santa Barbara project.
3. City development approvals will be vested for five years.

ENVIRONMENTAL REVIEW:

A Mitigated Negative Declaration (MND) has been prepared for the proposed project in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA). The document was made available for public review and comment during a 30-day review period from July 15 to August 15, 2005 and approved by the City Council on January 10, 2006.

Submitted by:

Robin Clauson
City Attorney

Sharon Wood
Assistant City Manager

Attachments: 1. City Council Resolution
 2. Affordable Housing Implementation Plan
 3. Memorandum of Understanding

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING AN AFFORDABLE HOUSING IMPLEMENTATION PLAN AND MEMORANDUM OF UNDERSTANDING FOR THE SANTA BARBARA CONDOMINIUM PROJECT AT 900 NEWPORT CENTER DRIVE (PA2004-169)

WHEREAS, on January 10, 2006, the City Council adopted Resolution No. 2006-2, approving an application by Lennar Homes for the development of 79 condominium units at 900 Newport Center Drive; and

WHEREAS, the Resolution includes Condition 5, which establishes the requirements for the project to meet the affordable housing requirements in the City's Housing Element; and

WHEREAS, on July 25, 2006, the City Council approved a comprehensive update to the General Plan, including changes in affordable housing requirements under an updated Housing Element; and

WHEREAS, on March 27, 2007, the City Council adopted Ordinance No. 2007-6, amending provisions under which development agreements shall be required for residential projects to implement new policies and land use changes in the General Plan; and

WHEREAS, Lennar has requested approval of an Affordable Housing Implementation Plan that complies with the requirements of the updated Housing Element as satisfaction of Condition 5; and

WHEREAS, Lennar wishes to enter into a development agreement to comply with Ordinance No. 2007-6, vest its rights to develop the project as approved and establish a public benefit contribution to the City;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newport Beach hereby approves the Affordable Housing Implementation Plan for Santa Barbara Condominiums attached as Exhibit 1, and approves the Memorandum of Understanding Between Lennar Homes of California, Inc and City of Newport Beach attached as Exhibit 2.

Passed and adopted at a regular meeting of the City Council of the City of Newport Beach held on July 24, 2007.

MAYOR

ATTEST:

CITY CLERK

**Lennar Homes
Santa Barbara Condominiums**

Affordable Housing Implementation Plan

City of Newport Beach, CA

July 24, 2007

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I. Executive Summary

In January 2006 the City of Newport Beach approved a General Plan Amendment, Coastal Land Use Plan Amendment and Planned Community Text for a project being proposed by Lennar Homes. The project consists of 79 market rate single-family condominiums in Newport Center, adjacent to the Newport Beach Marriott on the former tennis court site. Condition 5 of the City Council Resolution approving the project establishes the affordable housing requirement for the project, as follows:

The applicant shall provide a minimum of 20% of the total units (16 units) for affordable income households in accordance with Housing Programs 2.2.1 and 2.2.3 of the Newport Beach Housing Element. The applicant shall enter into an agreement with the City to provide said units, which units may be provided off-site, at an approved location within the City. These units shall be identified in the agreement and constructed and completed prior to the issuance of any certificate of occupancy for the project. The agreement shall be reviewed and approved by the City Attorney and shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the proposed subdivision.

Background

The City of Newport Beach's Housing Element as approved by the City Council in July, 2006, after approval of the Lennar project, includes an amended Housing Program 2.2.1, which sets the goal that 15% of all new housing units in the city be affordable to very low-, low- and moderate-income households. Projects with more than 50 units are required to prepare an Affordable Housing Implementation Plan (AHIP) that specifies how the development will meet the City's affordable housing goal.

City Process

Upon submittal of the Santa Barbara Condominium project to the city, Lennar began working with the city staff to evaluate scenarios to comply with the Housing Element. Due to the lack of available land in Newport Beach, Lennar gained conceptual consent of the City Council's Affordable Housing Task Force to purchase covenants to restrict existing, market rate units to moderate-income households and rents affordable to them.

Summary

After extensive research on options for meeting the affordable housing requirements, meeting with the Affordable Housing Task Force, and in consideration of the newly adopted Housing Element requirement for 15% of all new units to be affordable, Lennar agrees to meet the requirements of the City Council condition of approval and the July 2006 Housing Element as described below.

II. Affordable Housing Project Description

The Newport Courtyard Apartments at 1128 – 1142 Rutland Road, Newport Beach is an existing, market rate, 12-unit apartment complex. Lennar will satisfy its affordable housing requirement through the purchase and recordation of covenants that restrict the occupancy of the apartments to qualifying moderate-income households, and restrict the rental rates as affordable to these households, for 30 years. An Affordable Housing Agreement among the City of Newport Beach, Lennar and the property owner shall be executed and recorded prior to the recordation of the final tract map or the issuance of a building or grading permit for the Lennar project.

Unit Descriptions

The apartment complex consists of two separate buildings that face a common courtyard area that features a swimming pool. Each building contains six units and a laundry room. The units are generously sized at approximately 1,100 square feet. The apartments all contain two bedrooms and two bathrooms and a dining area. Each unit has one assigned carport. While the units were built in 1961, the owner is currently undertaking a significant renovation effort to upgrade the complex.

Renovations

Comprehensive renovations to the property to make the complex comparable with more recently constructed projects and ensure that it provides viable housing opportunities for the term of the covenants will be completed prior to the issuance of any certificate of occupancy for the Lennar project, as required by the City Council condition of approval. The renovations will include the following:

Buildings/Common Areas

- Recovering of the existing stucco on the building façade with Hardiplank Select Cedarmill Siding
- Complete replacement of all roof materials
- Exterior repainting of the entire complex, including the iron handrails
- Installation of new vertical wrought iron pickets between the existing pickets on the railings in the courtyard area
- Installation of new redwood fencing on the back side of both buildings, enclosing rear patio/porch areas
- Replacement of fences enclosing patio areas for each unit adjacent to the common courtyard with lower landscape shrubs to allow visibility and openness in the courtyard area for each apartment
- Renovation of both laundry rooms to include:
 - New 30 gallon electric water heaters and non-burst water supply lines
 - New countertop for folding clothes
 - New vinyl flooring, windows and doors
- Installation of new motion detecting light fixtures in the garage area
- Replacement of concrete in the central common area with pavers throughout the courtyard
- New landscaping throughout the property

Units

Kitchens

- Complete kitchen remodel of two units with new appliances, countertops, cabinets and sinks
- Replacement of seven-year old appliances with new ones in two units
- Maintenance of appliances less than three years old in eight units

Bathrooms

- Replacement of all toilets with new, low-flow toilets
- Replacement of all shower heads with new, low-flow shower heads

Windows and Doors

- Installation of new vinyl windows and sliding glass doors
- Installation of new Dutch style front doors in all 12 units

Walls and Floors

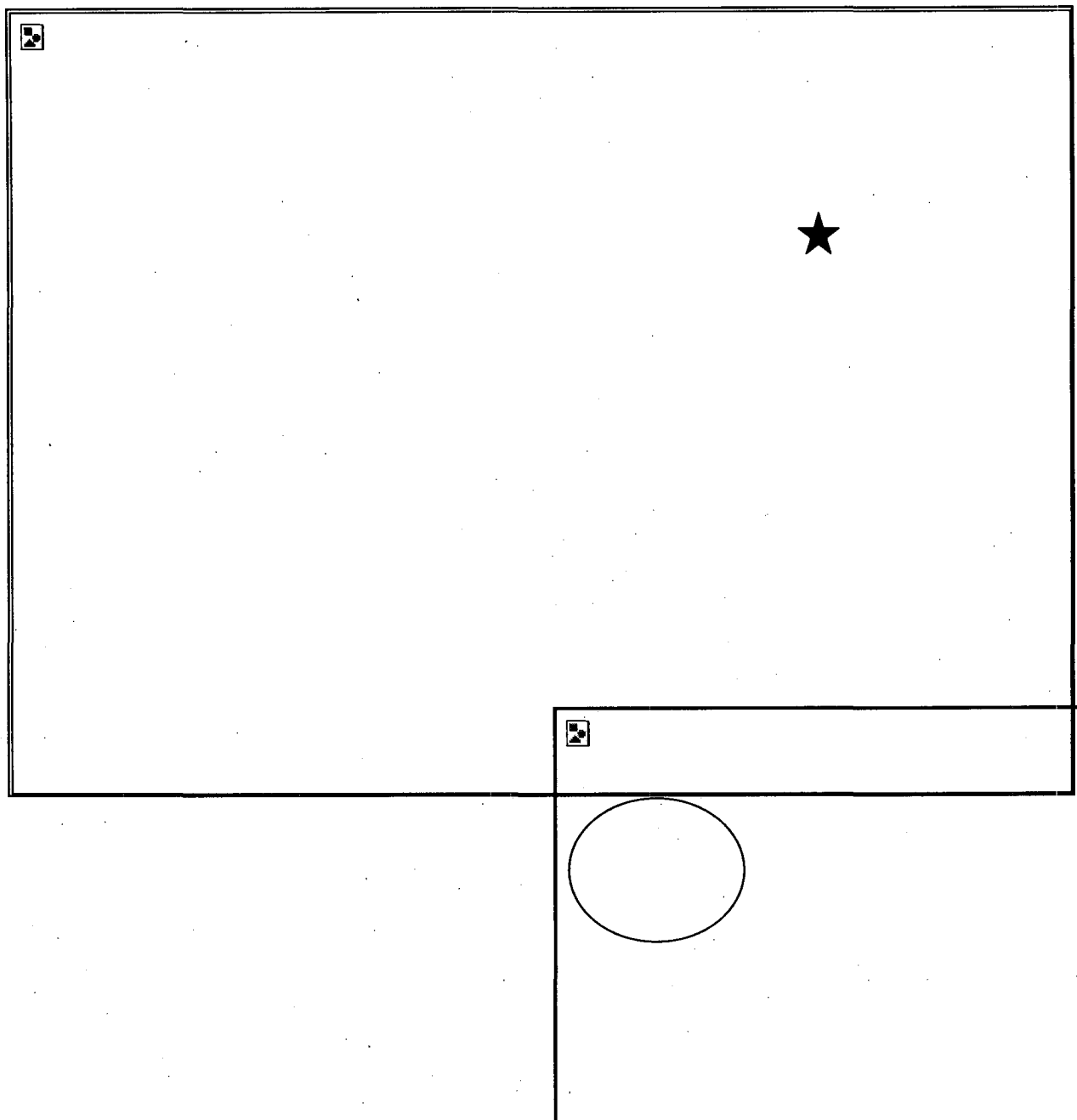
- Repainting of all units' interiors
- Installation of new carpet in each unit

Maintenance

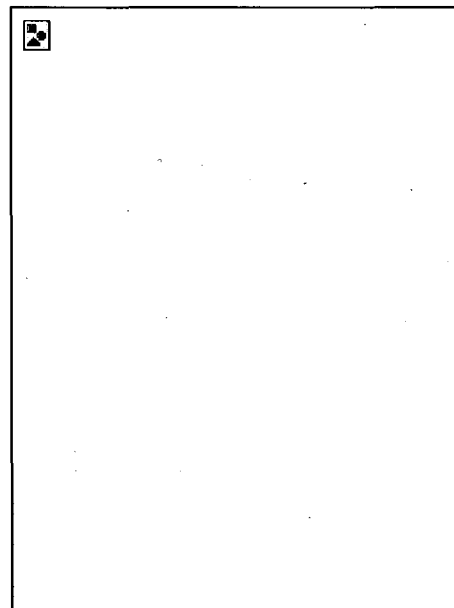
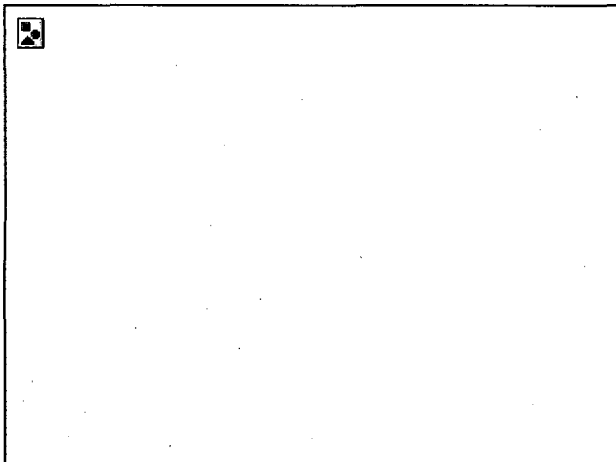
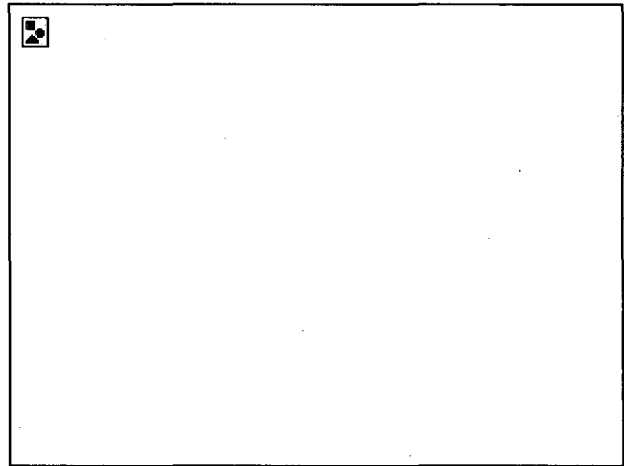
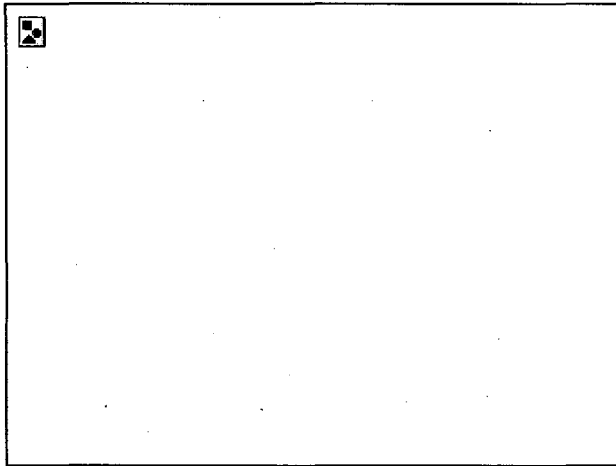
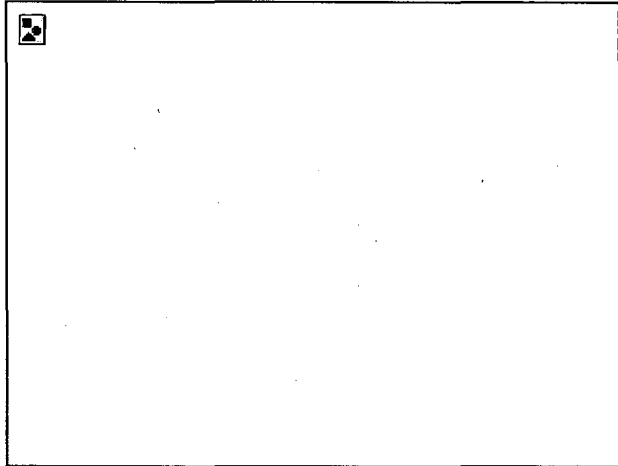
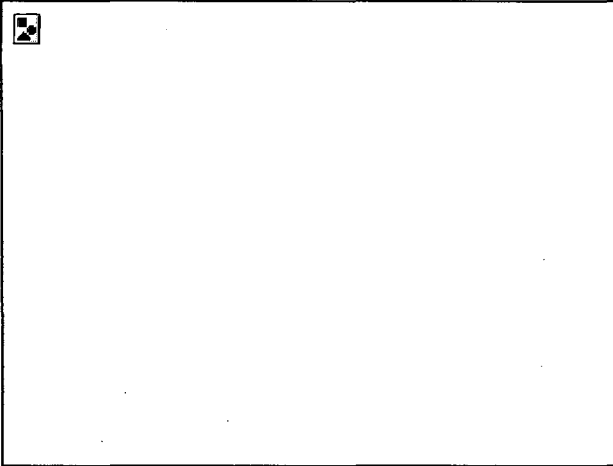
The property will be maintained and preserved in good condition, in good repair, and in a decent, safe, sanitary, habitable and tenantable condition. All units will be fit for occupation by human beings and substantially comply with state and local building and health codes. At a minimum, all rental units shall have the following:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors
- Plumbing facilities in good working order, including hot and cold running water, kitchen sink, working toilet, wash basin, and bathtub or shower, connected to a sewage disposal system
- Gas facilities in good working order
- Heating facilities in good working order
- An electric system, including lighting, wiring, and equipment, in good working order
- Clean and sanitary buildings, grounds, and appurtenances (for example, courtyard, swimming pool and carports), free from debris, filth, rubbish, garbage, rodents, and vermin
- Adequate trash receptacles in good repair
- Floors, stairways, and railings in good repair
- Safe fire or emergency exits leading to a street or hallway
 - Stairs, hallways, and exits kept litter-free
 - Storage areas, garages, and basements kept free of combustible materials
- Operable deadbolt locks on the main entry doors of rental units, and operable locking or security devices on windows
- Working smoke detectors in all units and in common stairwells
- Ground fault circuit interrupters for swimming pools and antisuction protections

Project Location Map



Site Photos



III. Consistency with Housing Element

The City of Newport Beach completed a comprehensive General Plan update in 2006. The Housing Element was included in the update to ensure consistency with the updated Land Use Element.

The Housing Element details a number of goals for the City, which include the following: promoting quality residential development through application of sound planning principles and policies that encourage preservation, conservation, and appropriate redevelopment of housing stock; providing a balanced residential community that contains a variety of housing types, designs and opportunities for all economic segments of the community; extension of affordability covenants with owners of existing affordable apartments; preserving and increasing housing affordability, through rental housing, for very low- and low-income households; and providing housing for special needs groups.

The affordable housing apartment complex achieves a number of the above goals, including promoting quality residential development, preserving and increasing housing affordability and contributing to a balanced residential community through rental housing. By converting 12 existing, market rate rental units exclusively for Moderate Income Households for 30 years, the project increases housing affordability in the City and preserves rental housing that might otherwise be converted to condominiums.

The affordable housing apartment complex is consistent with a number of the goals and policies in the Housing Element. Listed below is a matrix of where the Housing Element and project are consistent

Goal	Project Consistency
H 1 Quality residential development and preservation, conservation, and appropriate redevelopment of housing stock	Project renovates and preserves an existing apartment community in Newport Beach and adds deed restrictions to all 12 units for 30 years to restrict rental to qualifying moderate income households
H 3 Housing opportunities for as many renter and owner occupied households as possible in response to the demand for housing in the city	Project provides for 12 additional rental units available to Moderate Income Households

IV. Income and Rent Limits

The Newport Courtyard Apartments at 1128 – 1142 Rutland Road, Newport Beach will be restricted for rent by qualifying households. In order to meet the minimum eligibility requirements the units must be rented to households qualifying as Moderate Income Households.

Moderate Income Households will have income that does not exceed 120% of the Orange County ("County"), California annualized median family income ("Moderate Income") as then currently published by the United States Department of Housing and Urban Development ("HUD") for the County based on four (4) person households, as the same may be adjusted from time to time. -

Rent shall not exceed thirty percent (30%) of the income limit.

Appendix A
City of Newport Beach Resolution of Approval

[TO BE INSERTED]

**MEMORANDUM OF UNDERSTANDING BETWEEN LENNAR HOMES
OF CALIFORNIA, INC. AND CITY OF NEWPORT BEACH**

This Memorandum of Understanding ("MOU") is entered into by and between Lennar Homes of California, Inc., ("Lennar") and the City of Newport Beach (City), a municipal corporation, through its duly elected, appointed, qualified or acting representatives.

RECITALS

A. WHEREAS, on January 10, 2006 the Newport Beach City Council approved Resolution NO. 2006-2 adopting Mitigated Negative Declaration (SCH NO. 2005-071067) and approved General Plan Amendment No. 2004-005, Local Coastal Program Land Use Plan Amendment No. 2005-001, Tentative Parcel Map No. 2005-014, Tentative Tract Map No. 2004-004 (16774), Traffic Study No. 2005-002 and Coastal Residential Development Permit No. 2005-004 and adopted Ordinance No. 2006-1 approving Planned Community Development No. 2005-003 amending Zoning District Map No. (48) changing the subject property from CV-B to RM-C for property located at 900 Newport Center Drive (PA 2004-169); and

B. WHEREAS, on July 25, 2006 the City Council approved a comprehensive update of the City's General Plan, including changes in Affordable Housing Requirements under an updated Housing Element; and

C. WHEREAS, on March 27, 2007, the City Council adopted Ordinance No. 2007-6, amending provisions under which development agreements shall be required for residential development projects in the City to implement new policies and Land Use changes in the new General Plan and requiring development agreements for projects that require a legislative act and include more than 50 units; and

D. WHEREAS, on July 10, 2007 the California Coastal Commission approved City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06 Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums) subject to modifications; and

E. WHEREAS, Lennar has requested approval of an Affordable Housing Implementation Plan (AHIP) which documents Lennar's commitment to the provision of 12 apartment units in the Moderate Income level for a period of 30 years and which will satisfy the intent of Condition No. 5 of Resolution No. 2006-2 for affordable housing; but will comply with the amended requirements for number of units of affordable housing under the updated Housing Element.

F. WHEREAS, concurrent with and as consideration for the approval of the AHIP under the provisions of the updated Housing Element, the two parties wish to enter into a development agreement to vest the right to develop the project without additional public benefit

contributions other than payment to the City of Newport Beach the amount of \$5 million for the City to use for projects that provide a public benefit to the City as determined by the City Council.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

Section 1. The City shall give prompt consideration to the necessary support language for Coastal Commission approval of the Coastal Development Permit, and to the Affordable Housing Implementation Plan (AHIP) required by the current Housing Element.

Section 2. The parties will expeditiously prepare and the Newport Beach Planning Commission and City Council will promptly consider approval of a development agreement that includes the following principal provisions. The development agreement must be approved and executed before the issuance of any grading or building permit for the project.

A. As a condition of the development agreement, Lennar shall pay \$5 million to the City of Newport Beach. This amount shall be paid in two installments, \$2 million to be delivered concurrently with the issuance of the first residential building permit and \$3 million to be delivered concurrently with the issuance of the final occupancy permit for all 79 homes. If the certificate of occupancy for the 79th unit is not issued within in 12 months of the first certificate of occupancy then the \$3 million shall be due on a pro rata per unit basis for those units for which a certificate of occupancy has been issued and payable on a pro rata basis for the ensuing units as each certificate of occupancy is issued. Upon payment of this amount, no other payment shall be required for public benefit to the City of Newport Beach.

B. The City will expeditiously review the Affordable Housing Agreement to implement the AHIP, and will provide expedited review of development plans for the project, in support of timely receipt of building permits and final occupancy permits.

C. City development approvals will be vested for a period not to exceed five (5) years.

Section 3. The terms of this MOU shall become effective upon execution by both parties and shall continue thereafter until the satisfactory completion of the obligations of the parties as described herein. The MOU may be altered, changed, or amended by mutual consent of the parties. Any changes or amendments must be in writing and signed by the parties before such change or amendment shall take effect.

Section 4. The MOU is executed in counterparts, each of which shall be considered a duplicate original.

Section 5. Notices: Any demand upon or notice required or permitted to be given by one party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the parties in Paragraph 17. Notice of a change of address shall be given by written notice in the manner set forth in this section.

Section 6. For the purposes of this MOU, all information, requests, or other business including any demand upon a party or notice pursuant hereto shall be coordinated through the following

agency representatives:

City of Newport Beach
Homer Bludau, City Manager 3300
Newport Blvd.
Newport Beach, CA 92658-8915

Lennar Homes of California, Inc.
Mr. John Baayoun
Regional Vice President
25 Enterprise
Aliso Viejo, CA 92656

Section 7. This MOU shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

Section 8. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

APPROVED AS TO FORM:

CITY OF NEWPORT BEACH,
A Municipal Corporation

By: _____
Robin Clauson
City Attorney

By: _____
Steven Rosansky
Mayor

ATTEST:

Lennar Homes of California, Inc.

By: _____
LaVonne Harkless
City Clerk

By: _____
John Baayoun
Regional Vice Presiden

EXHIBIT 7



CHAPTER 3 Land Use Element



Land Use Element

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
1	L4	MU-H2	460,095	471 Hotel Rooms (not included in total square footage)	
2	L4	MU-H2	1,052,880		
2.1	L4	MU-H2	18,810		11,544 sf restricted to general office use only (included in total square footage)
3	L4	CO-G	734,641		
4	L4	MU-H2	250,176		
5	L4	MU-H2	32,500		
6	L4	MU-H2	46,044		
7	L4	MU-H2	81,372		
8	L4	MU-H2	442,775		
9	L4	CG	120,000	164 Hotel Rooms (included in total square footage)	
10	L4	MU-H2	31,362	349 Hotel Rooms (not included in total square footage)	
11	L4	CG	11,950		
12	L4	MU-H2	457,880		
13	L4	CO-G	288,264		
14	L4	CO-G/MU-H2	860,884		
15	L4	MU-H2	228,214		
16	L4	CO-G	344,231		
17	L4	MU-H2	33,292	304 Hotel Rooms (not included in total square footage)	
18	L4	CG	225,280		
19	L4	CG	228,530		
21	J6	CO-G	687,000		Office: 660,000 sf; Retail: 27,000 sf
		CV		300 Hotel Rooms	
22	J6	CO-G	70,000		Restaurant: 8000 sf, or Office: 70,000 sf
23	K2	PR	15,000		
24	L3	IG	89,624		
25	L3	PI	84,585		
26	L3	IG	33,940		
27	L3	IG	86,000		
28	L3	IG	110,600		
29	L3	CG	47,500		
30	M6	CG	54,000		
31	L2	PR	75,000		
32	L2	PI	34,000		
33	M3	PI	163,680		Administrative Office and Support Facilities: 30,000 sf Community Mausoleum and Garden Crypts: 121,680 sf Family Mausoleums: 12,000 sf
34	L1	CO-R	484,348		
35	L1	CO-R	199,095		
36	L1	CO-R	227,797		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
37	L1	CO-R	131,201	2,050 Theater Seats (not included in total square footage)	
38	L1	CO-M	443,627		
39	L1	MU-H3	408,084		
40	L1	MU-H3	1,426,634	425 Hotel Rooms (included in total Square Footage)	
41	L1	CO-R	327,671		
42	L1	CO-R	286,166		
43	L1	CV		611 Hotel Rooms	
44	L1	CR	1,619,525	1,700 Theater Seats (not included in total square footage)	
45	L1	CO-G	162,364		
46	L1	MU-H3/PR	3,725	24 Tennis Courts	Residential permitted in accordance with MU-H3.
47	L1	CG	105,000		
48	L1	MU-H3	337,261		
49	L1	PI	45,208		
50	L1	CG	25,000		
51	K1	PR	20,000		
52	K1	CV		479 Hotel Rooms	
53	K1	PR	567,500		See Settlement Agreement
54	J1	CM	2,000		
55	H3	PI	119,440		
56	A3	PI	1,343,238	990,349 sf Upper Campus 577,889 sf Lower Campus	In no event shall the total combined gross floor area of both campuses exceed the development limit of 1,343,238 sq. ft.
57	Intentionally Blank				
58	J5	PR	20,000		
59	H4	MU-W1	247,402	144 Dwelling Units (included in total square footage)	
60	N	CV	2,660,000	2,150 Hotel Rooms (included in total square footage)	
61	N	CV	125,000		
62	L2	CG	2,300		
63	G1	CN	66,000		
64	M3	CN	74,000		
65	M5	CN	80,000		
66	J2	CN	138,500		
67	D2	PI	20,000		
68	L3	PI	71,150		
69	K2	CN	75,000		
70	D2	RM-D			Parking Structure for Bay Island (No Residential Units)
71	L1	CO-G	11,630		
72	L1	CO-G	8,000		
73	A3	CO-M	350,000		
74	L1	PR	35,000		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
75	L1	PF			City Hall, and the administrative offices of the City of Newport Beach, and related parking, pursuant to Section 425 of the City Charter.
76	H1	CO-G		0.5 FAR	1.0 FAR permitted, provided all four legal lots are consolidated into one parcel to provide unified site design
77	H4	CV	240,000	157 Hotel Rooms (included in total square footage)	
78	B5	CM	139,840		
79	H4	CG		0.3/0.5	Development limit of 19,905 sq.ft. permitted, provided all six legal lots are consolidated into one parcel to provide unified site design

LU 4.2 Prohibition of New Residential Subdivisions

Prohibit new residential subdivisions that would result in additional dwelling units unless authorized by an amendment of the General Plan (GPA). Lots that have been legally merged through the *Subdivision Map Act* and City Subdivision Code approvals are exempt from the GPA requirements and may be re-subdivided to the original underlying legal lots. This policy is applicable to all Single Unit, Two Unit, and Multiple Unit Residential land use categories. (*Imp 6.1*)

LU 4.3 Transfer of Development Rights

Permit the transfer of development rights from a property to one or more other properties when:

- The donor and receiver sites are within the same Statistical Area.
- The reduced density/intensity on the donor site provides benefits to the City such as, but not limited to, the (1) provision of extraordinary open space, public visual corridor(s), parking or other amenities; (2) preservation of a historic building or property or natural landscapes; (3) improvement of the area's scale and development character; (4) consolidation of lots to achieve a better architectural design than could be achieved without lot consolidation; and/or (5) reduction of local vehicle trips and traffic congestion;
- The increment of growth transferred to the receiver site complements and is in scale with surrounding development, complies with community character and design policies contained in this Plan, and does not materially degrade local traffic conditions and environmental quality.
- Transfer of Development Rights in Newport Center is governed by Policy 6.14.3 (*Imp 2.1, 5.1, 10.2*)

CITY of NEWPORT BEACH
GENERAL PLAN
Figure LU13
STATISTICAL AREAS
F1, L1, L2, M1-M5

- Residential Neighborhoods**
- RS-D Single-Unit Residential Detached
 - RS-A Single-Unit Residential Attached
 - RT Two-Unit Residential
 - RM Multiple Unit Residential
 - RM-D Multiple-Unit Residential Detached
- Commercial Districts and Corridors**
- CN Neighborhood Commercial
 - CC Corridor Commercial
 - CG General Commercial
 - CV Visitor Serving Commercial
 - CM Recreational and Marine Commercial
 - CR Regional Commercial
- Commercial Office Districts**
- CO-G General Commercial Office
 - CO-M Medical Commercial Office
 - CO-R Regional Commercial Office
- Industrial Districts**
- IG Industrial
- Airport Supporting Districts**
- AO Airport Office and Supporting Uses
- Mixed -Use Districts**
- MU-V Mixed Use Vertical
 - MU-H Mixed Use Horizontal
 - MU-W Mixed Use Water Related
- Public, Semi-Public and Institutional**
- PF Public Facilities
 - PI Private Institutions
 - PR Parks and Recreation
 - OS Open Space
 - TS Tidelands and Submerged Lands
- City of Newport Beach Boundary**
- Statistical Area Boundary**
- Land Use Delineator Line**
- Refer to anomaly table**



EIP



CC Resolution No.	GPA No.	Project No.	Adopting Date	Description
2008-97	GP2008-009	PA2008-182	11/24/2008	City Hall Site - Change OS to PF and create Anomaly No. 75
2009-3	GP2007-008	PA2007-210	01/27/2009	Big Canyon - Parcel Map on portion of golf course - Change PR to RS-D
2010-108	GP2010-008	PA2010-052	09/14/2010	Change public beach portion of the property located at 1901-1911 Bayside Drive from PF to PR





CITY OF NEWPORT BEACH

STAFF APPROVAL NO. SA2004-009
(PA2004-084)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3229

Staff Person: Javier S. Garcia, 644-3206
Appeal Period: 14 days after approval date

May 11, 2004*

RECEIVED MAY 19 2004

Bob Shorb, Host Marriott
6903 Rockledge Drive, Suite 1500
Bethesda, MD 20817

APPLICATION: Staff Approval No. SA2004-009 (PA2004-084)

REQUEST: In conjunction with the proposed renovation and remodel of the existing Marriott Hotel, the applicant requests a review of the project changes for a determination by the Planning Director of substantial conformance with the existing approved Site Plan Review No. 29.

APPLICANT: Bob Shorb for Host Marriott, property owner

LOCATION: 900 NEWPORT CENTER DRIVE

Proposed Project:

The applicant proposes to renovate and remodel the hotel and reconfigure amenities within the facility as well as additions and demolition. The project remodel entails demolition of a portion of the hotel rooms and meeting rooms to construct two new meeting rooms on-site adjacent to Santa Barbara Drive. The gross square footage of the project will be less than the currently authorized 363,373 square feet and the number of hotel rooms will be reduced. The hotel is currently authorized 611 hotel rooms and currently operates 586. The total number of rooms will be reduced to 532 by combining existing rooms to create larger suites and the conversion of square footage to provide other hotel related amenities and facilities.

The project as proposed will eliminate an access drive aisle that provides access between the parking lot at the front of the property and the parking lot at the rear of the property. It is anticipated that additional directional signage will be provided to facilitate vehicular traffic in finding the project parking structure located at the Newport Center Drive side of the property and is discussed in detail in the appendix of this document.

Authority:

Section 20.92.080 A of the Newport Beach Municipal Code provides that the Planning Director may waive the requirement for a new or amended site plan review application. The waiver may be granted if the changes are minor, do not involve substantial alterations, an addition to the plan or the conditions of approval and are consistent with the intent of the original approval. The property is located in the APF District.

ACTION: Approved May 11, 2004.

Findings:

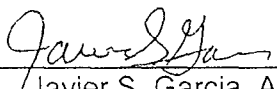
The Planning Director in approving this application reviewed the project with regard to the proposed change to the site plan, vehicular and pedestrian circulation and conformance with the approved site plan review. The proposed reduction in the number of hotel rooms results in a reduction in the overall parking requirement of the project and the site plan changes reduce the number of on site parking spaces. The detailed discussion can be found in the appendix of this document. In consideration of those aspects, the Planning Director determined in this particular case that the proposal, in accordance with 20.92.080 A of the Newport Beach Municipal Code, is a minor change that does not necessitate the filing of a new or amended use permit or site plan review application. Additionally, the Planning Director hereby waives the requirement for the filing of a new or amended application for the site plan review. The Planning Director made the determination based on the following findings:

1. The project as proposed is consistent with the Land Use Element of the General Plan and the Local Coastal Program and limits the site to a maximum of 611 hotel rooms. The Land Use Element of the General Plan and the Local Coastal Program do not limit the gross square footage or building footprint of the project. Additionally, the size of the facility will be less than that previously approved by Site Plan Review No. 29.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities) and Class 2 (Replacement or Reconstruction).
3. The reduction in the number of hotel rooms and the proposed facilities addition reduces the number of required parking spaces and the new configuration will provide the number of on-site parking spaces required by the current site plan review approval (1.31 parking spaces for each guest room).
4. The remodel entails demolition of a portion of the hotel rooms and meeting rooms, the construction of an expanded lobby, addition of meeting rooms adjacent to the Santa Barbara Drive side of the property and other amenities and facilities related to the hotel operation.
5. The hotel is currently authorized 611 hotel rooms and currently operates 586. The total number of rooms will be reduced to 532 by combining existing rooms to create larger suites and to provide other hotel related amenities and facilities.
6. The site plan review does not establish specific required setbacks measured from the street or a specific building footprint or size.
7. The total percentage of compact parking spaces provided will not exceed 25% of the available parking pool.

Conditions:

1. Development shall be in substantial conformance with the approved site plan, floor plan and elevations. Any deviation from the plans submitted and approved by this action may require separate review and approval to determine substantial conformance with this approval.
2. All applicable conditions of approval of Site Plan Review No. 29 shall remain in force.
3. The use or provision of compact parking (maximum of 25% of the total parking provided) shall be in accordance with the conditions of approval for Site Plan Review No. 29.
4. The parking and circulation system for vehicular and pedestrian traffic shall be reviewed and approved by the City Traffic Engineer prior to issuance of building permits. All work within the public right-of-way shall be performed under an encroachment permit issued by the Public Works Department.
5. Prior to issuance of the building permits for the proposed renovation and remodel, a revised architectural site plan and floor plans of the approved plans shall be forwarded to the Planning Department for inclusion into this staff approval file.
6. The Planning Director or the Planning Commission may add to or modify conditions of approval to this use permit, or revoke this permit upon a determination that the operation, which is the subject of this approval, causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.

PATRICIA L. TEMPLE, Planning Director

By 
Javier S. Garcia, AICP
Senior Planner

F:\USERS\PLN\SHARED\PA\S\PAS - 2004\PA2004-084\SA2004-009 APPR.DOC

Attachments: Appendix
Vicinity Map
Letter from Applicant
Describing the Request
Site Plan and Floor Plan
(available for review in Planning Dept.

property owner:
Host Marriott
6903 Rockledge Drive, Suite
1500
Bethesda, MD 20817

cc:

APPENDIX

Use Permit

The original use permit was related to the use of a portion of the hotel facilities for recreational and electronic games. This use permit was not exercised within 24 months of the effective date of the Planning Commission or City Council action. Therefore, the use permit is null and void.

A determination of substantial conformance with the project approved by Use Permit No. 2095 is not necessary since it was not exercised and was allowed to expire.

Site Plan Review

Section 20.92 establishes the purpose and procedures for the site plan review. At its meeting of February 14, 1983, the Planning Commission reviewed and approved General Plan Amendment 81-3, Traffic Study, Site Plan Review No. 29 and Use Permit No. 2095. The site plan review was approved to establish the project site plan with the existing building location and parking lot layout.

A determination of substantial conformance with Site Plan Review No. 29 is subject to review and approval by the Planning Director in accordance with Section 20.92.080 A of the Newport Beach Municipal Code. The Planning Director has determined that the project as proposed is not in substantial conformance with the approved Site Plan Review No. 29. However, the Planning Director has determined that the project as proposed to allow:

- Demolition of portions of the existing hotel structures, including hotel rooms;
- Relocation and addition of meeting rooms and other hotel amenities;
- Site plan alterations to the parking lot;
- Site plan alterations to the access driveways and circulations aisles,

are minor changes that do not necessitate the filing of a new site plan review application. The Planning Director has also determined that the proposed changes do not alter or modify any existing conditions of approval of the original approval based on the following review.

Site Plan Changes

The proposed changes to the site plan are functional changes to reconfigure hotel amenities and reduce the number of hotel rooms. Approximately 42 rooms will be demolished between the South Tower and the South Wing of the facility and will be replaced by an enhanced garden and landscape area. The main lobby will be enlarged and reconfigured and new meeting rooms will be located on the Santa Barbara Drive side of the property and extend to within 7-feet of the property line (the existing building maintains a setback of 25-feet). There are no minimum setback distances specified by the Site Plan Review No. 29, therefore, staff has determined that the change is a minor site plan alteration that does not justify the filing of a new application.

The location of the new meeting rooms will result in the loss of an existing drive aisle that connects the front and rear parking lots of the project. The vehicular circulation is discussed below.

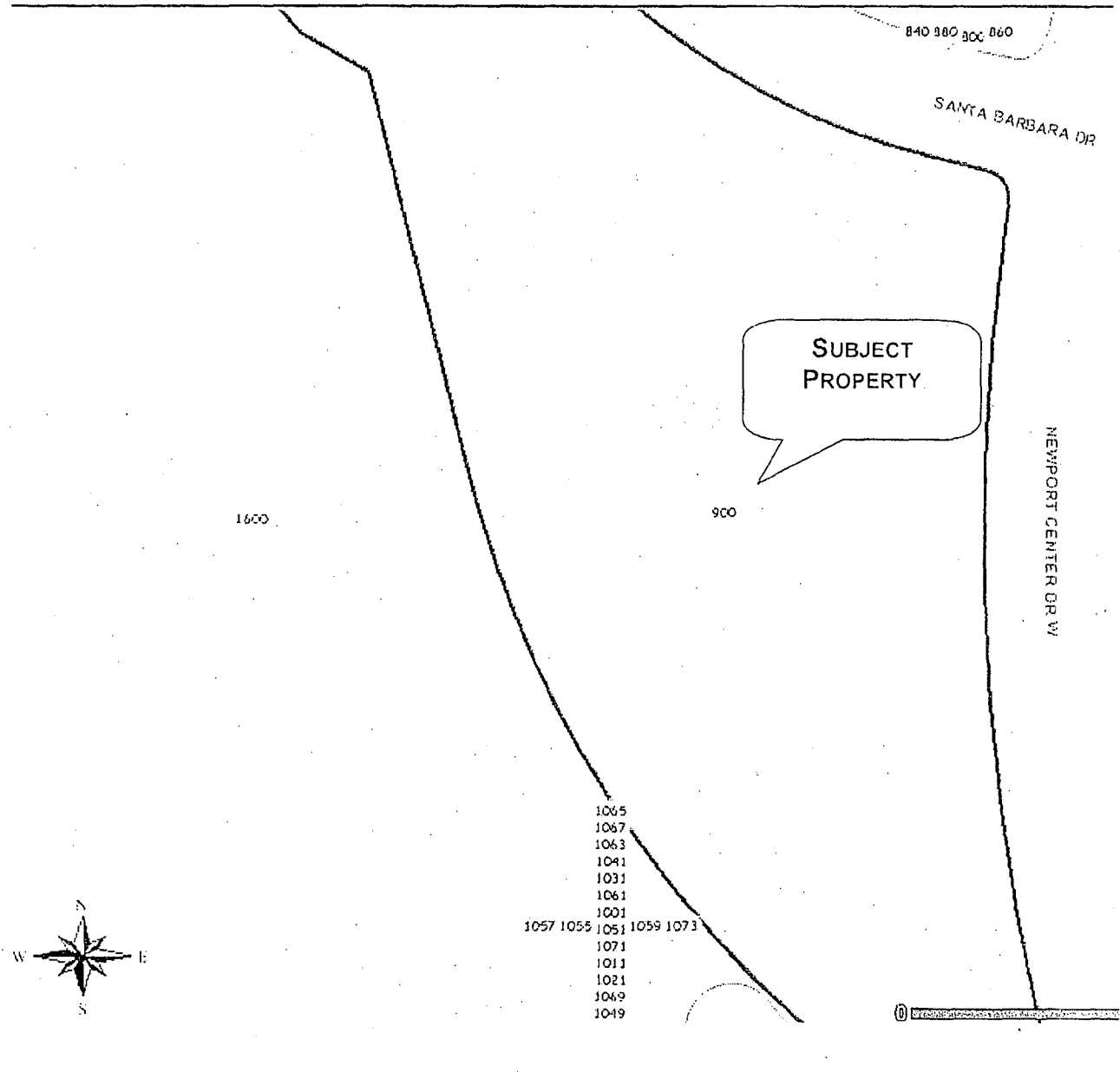
Vehicular Circulation Changes

As stated previously, the meeting rooms will displace the existing drive aisle that provides direct access from the rear parking lot to the front parking lot. The new rear parking lot will also be provided an enhanced access drive that will facilitate access to the service entrance of the hotel facility. Additionally, the enhanced drive entrance will also serve the nearby meeting rooms as a drop off point for valet service personnel. All work proposed within the public right-of-way shall be approved through an encroachment permit issued by the Public Works Department.

Parking Requirement

The Planning Commission approved language in General Plan Amendment No. 81-3 that allowed for a parking requirement based on a demonstrated formula. The parking requirement established by Site Plan Review No. 29 was 1.31 parking spaces for each guest room. The applicant proposes to utilize the same parking requirement and apply it to the reduced number of hotel rooms. This will result in a reduction of the parking requirement from 768 spaces to 697 parking spaces (rooms reduced from 586 to 532). Staff is of the opinion that the reduction in the number of hotel rooms justifies the reduction in the number of required parking spaces. The site plan review also included a modification permit to the Zoning Ordinance to allow the use of compact parking spaces with a total not to exceed 25% of the available parking pool. The proposed parking plan is subject to review and approval by the Public Works Department for the final location of the compact parking spaces on site. Staff is of the opinion that the surplus parking spaces over and above the required number shall be provided as conforming parking spaces and not as additional compact spaces. This will require alterations to the parking plan as presented.

VICINITY MAP



Staff Approval No. SA2004-009
(PA2004-084)

900 NEWPORT CENTER DRIVE

EXHIBIT 10

Land Use Element
of the
City of Newport Beach

*Adopted by the
Newport Beach City Council*

*October 24, 1988
Resolution No. 88-100*

*(Incorporates General Plan Amendments
Approved Through September, 1995)*

Jamboree Road/MacArthur Boulevard Area (Statistical Division L)

This area is comprised of the major commercial and residential planned communities, including Newport Center, Big Canyon, Aeronutronic Ford/Belcourt, North Ford, San Diego Creek North, Jamboree/MacArthur, Koll Center Newport and Newport Place, as well as the Campus Drive Industrial Tract.

Newport Center (Statistical Area L1)

The Newport Center area is bounded by East Coast Highway, Jamboree Road, San Joaquin Hills Road and MacArthur Boulevard. Development is allocated to Newport Center on a block-by-block basis, as set forth in the following discussion. All landscaped entry areas of Newport Center are designated for Recreational and Environmental Open Space. Transfers of development rights in Newport Center are permitted, subject to the approval of the City with the finding that the transfer is consistent with the intent of the General Plan and that the transfer will not result in any adverse traffic impacts. It is proposed that Newport Center be rezoned to the Planned Community District, with a comprehensive Planned Community Text developed and adopted. All development limits are exclusive of parking.

1. *Block O - Corporate Plaza.* This site is bounded by Newport Center Drive, Farallon Drive, Avocado Avenue and Coast Highway. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 432,320 sq.ft. of office development. 85,000 sq.ft. of this total was transferred from Newport Village as part of the Library Exchange Agreement (Amendment No. 728). Support retail commercial uses are also allowed within this development allocation.
2. *Block 100 - Gateway Plaza.* This area is bounded by Newport Center Drive, Anacapa Drive and Farallon Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 196,545 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
3. *Block 200 - Design Plaza.* This area is bounded by Newport Center Drive, Block 300, Avocado Avenue, Farallon Drive and Anacapa Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 178,777 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
4. *Block 300 - Theater Plaza.* This area is bounded by Newport Center Drive, San Miguel Drive, Avocado Avenue and Block 200. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 104,158 sq.ft. of office development and 2,947 theater seats. [GPA 94-1(B)]. Support retail commercial uses are also allowed within this development allocation.

5. *Block 400 - Medical Plaza.* This area is bounded by Newport Center Drive, San Nicolas Drive, Avocado Avenue and San Miguel Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 88,173 sq.ft. of office development, and 351,945 sq.ft. of medical office development. Support retail commercial uses are also allowed within this development allocation.
6. *Block 500 - Company Plaza.* This area is bounded Newport Center Drive, Santa Rosa Drive, San Joaquin Hills Road, Avocado Avenue and San Nicolas Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 377,170 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
7. *Block 600 - Financial Plaza.* This area is bounded by Newport Center Drive, Santa Cruz Drive, San Joaquin Hills Road and Santa Rosa Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 959,134 sq.ft. of office development and 325 hotel rooms. Support retail commercial uses are also allowed within the office portion of this development allocation. [GPA 93-2(D)]
8. *Block 700 - Insurance Plaza.* This site is bounded by Newport Center Drive, Santa Maria Road, San Clemente Drive and Santa Cruz Drive. The site is designated for Administrative, Professional and Financial Commercial land use and is allocated 327,671 sq.ft. of office development. Support retail commercial uses are also allowed within this development allocation.
9. *Block 800 - Pacific Plaza.* This area is bounded by Newport Center Drive, Santa Barbara Drive, San Clemente Drive and Santa Maria Road. The site is designated for Administrative, Professional and Financial Commercial and Multi-Family Residential land uses. The office portion of the block is allocated 240,888 sq.ft. of office development and 13,096 sq.ft. of restaurant use. Support retail commercial uses are also allowed within this development allocation. The residential portion of this block is allocated 245 dwelling units.
10. *Block 900 - Hotel Plaza.* This area is bounded by Newport Center Drive, the Balboa Bay Tennis Club, the Newport Beach Country Club, Jamboree Road and Santa Barbara Drive. The site is designated for Administrative, Professional and Financial Commercial and Multi-Family Residential land uses. The allowed development is 611 hotel rooms with ancillary hotel support facilities and 16,630 sq.ft. of office development. [GPA 94-1(A)]. The residential site is allocated 67 dwelling units.
11. *Civic Plaza.* This area is bounded by Jamboree Road, San Joaquin Hills Road, Santa Cruz Drive, San Clemente Drive, and Santa Barbara Drive. The site is designated for Administrative, Professional and Financial Commercial; Retail and Service Commercial and Governmental, Educational and Institutional Facilities. Entitlement in this block is as follows:

Office:	337,261 sq.ft.	Police Station:	48,000 sq.ft.
Museum:	31,208 sq.ft.	Auto Dealer:	2.14 acres/25,000 sq.ft.
Fire Station:	13,481 sq.ft.	Retail:	1,760 sq.ft.

The City library site was previously shown for Government, Educational and Institutional Facilities, with an alternate use of Administrative, Professional and Financial Commercial. As part of the Newport Center Library Exchange Agreement between the City and The Irvine Company, GPA 91-1(C) and Amendment No. 729 were approved deleting the library designation from Civic Plaza and increasing the Administrative, Professional and Financial Commercial entitlement by 57,150 sq.ft., 35,000 sq.ft. of which was transferred from Newport Village and 22,150 sq.ft. of which was new entitlement. Subsequently, an additional 30,000 sq.ft. of office entitlement was transferred to Civic Plaza from Corporate Plaza West (Amendment No. 755). The existing 14,000 sq.ft. library will be permitted to remain in Civic Plaza until such time as the new library is completed in Newport Village. The existing art museum occupies 21,208 sq.ft., with an allocation for 10,000 additional sq.ft.

12. *Corporate Plaza West.* This site is bounded by Newport Center Drive, East Coast Highway, the Newport Beach Country Club and the Balboa Bay Tennis Club. The site is designated for Administrative, Professional, and Financial Commercial land use. The site is allocated 115,000 sq.ft.
13. *Balboa Bay Tennis Club.* This site is bounded by Corporate Plaza West, the Newport Beach Tennis Club and the Granville Apartments. The site is designated for Recreational and Environmental Open Space and is allocated 24 tennis courts.
14. *Newport Beach Country Club.* This site is designated for Recreational and Environmental Open Space to allow the continuation of the 131.52 acre facility.
15. *Amling's Nursery.* This site is located on East Coast Highway and is designated for Retail and Service Commercial land use. The maximum allowed development is 5,000 sq.ft. for retail commercial land use only.
16. *Villa Point.* This site is bounded by East Coast Highway, Jamboree Road, Sea Island and the Newport Beach Country Club. The site is designated for Multi-Family Residential land use and is allocated 228 dwelling units. 20% of the units shall be affordable, with the affordability standards and term determined at the time of project approval.
17. *Sea Island.* This area is located on Jamboree Road across from the Newporter Resort. The site is designated for Single Family Attached development and is allocated 132 dwelling units, which reflects the existing land use.
18. *Fashion Island.* This site is located within the circle formed by Newport Center Drive. The site is designated for Retail and Service Commercial land use and is allocated 1,603,850 sq.ft. for regional retail and 1,700 theater seats. An additional 30,000 sq.ft.

of regional retail may be added upon commitment of the Bayview Landing site for senior citizen housing. [GPA 94-2(B)]. No office development is allowed in Fashion Island.

19. *Newport Village*. This area is bounded by San Joaquin Hills Road, MacArthur Boulevard, East Coast Highway and Avocado Avenue.

- A. Ten acres at Coast Highway and MacArthur Boulevard are designated for Governmental, Educational and Institutional Facilities for museum use with a maximum allowed development of 100,000 sq.ft.
- B. Four acres of the Newport Village area are shown for Recreational and Environmental Open Space for neighborhood park use. The precise location of the park site has not been established, but will be determined when plans are submitted for off-site development that was transferred as part of the Library Exchange Agreement.

The property owner shall provide the City with an irrevocable offer of dedication of four acres of the site in consideration for the conversion of previous residential entitlement to office use. The offer to dedicate the four acre parcel may be modified to require dedication of another site within the City subject to the consent of the property owner and the City. The irrevocable offer to dedicate the four acre parcel shall be provided within sixty (60) days after a written request from the City to the property owner. The irrevocable offer shall not obligate the property owner to dedicate the property prior to issuance of permits for the office development that was transferred off-site, or the execution of a development agreement which vests the property owner's rights to construct the allowable development.

- C. Approximately 2.5 acres at the corner of San Joaquin Hills Road and MacArthur Boulevard is also designated for Governmental, Educational and Institutional Facilities, for use as the Orange County Transit District transfer facility. Storage of buses overnight and routine maintenance of vehicles is not allowed on this site.
- D. A four acre portion of the Newport Village site was previously shown for Administrative, Professional and Financial Commercial Uses with an alternate of Government, Educational, Institutional Facilities to allow for the possible relocation of the City library currently located in Civic Plaza. As part of the Library Exchange Agreement, GPA 91-1(C) and Amendment No. 746 were approved designating this four-acre site for a 65,000 sq.ft. library, and deleting all previous entitlements.
- E. The balance of the site, which was previously designated for Administrative, Professional and Financial Commercial land use, was redesignated for Recreational and Environmental Open space as part of the Library Exchange Agreement and Amendment No. 746. All development entitlements for this

property were transferred to other areas of Newport Center as part of that agreement.

ESTIMATED GROWTH FOR STATISTICAL AREA L1						
	Residential (in du's)			Commercial (in sq.ft.)		
	Existing 1/1/87	Gen.Plan Projection	Projected Growth	Existing 1/1/87	Gen.Plan Projection	Projected Growth
1. Block O	-0-	-0-	-0-	246,146	432,320	186,174
2. Block 100	-0-	-0-	-0-	196,545	196,545	-0-
3. Block 200	-0-	-0-	-0-	207,781	207,781	-0-
4. Block 300	-0-	-0-	-0-	130,408	134,908	4,500
5. Block 400	-0-	-0-	-0-	440,118	440,118	-0-
6. Block 500	-0-	-0-	-0-	377,170	377,170	-0-
7. Block 600	-0-	-0-	-0-	1,284,134	1,284,134	-0-
8. Block 700	-0-	-0-	-0-	327,671	327,671	-0-
9. Block 800	-0-	245	245	253,984	253,984	-0-
10. Block 900	67	67	-0-	616,630	622,630	6,000
11. Civic Plaza	-0-	-0-	-0-	365,160	456,710	91,550
12. Corporate Plaza	-0-	-0-	-0-	15,000	115,000	100,000
13. Tennis Club	-0-	-0-	-0-	-0-	-0-	-0-
14. NB Country Club	-0-	-0-	-0-	-0-	-0-	-0-
15. Amling's	-0-	-0-	-0-	3,960	5,000	1,040
16. Villa Point	-0-	228	228	-0-	-0-	-0-
17. Sea Island	132	132	-0-	-0-	-0-	-0-
18. Fashion Island	-0-	-0-	-0-	1,603,850	1,633,850	30,000
19. Newport Village	-0-	-0-	-0-	650	165,000	164,350
<i>TOTAL</i>	<i>199</i>	<i>672</i>	<i>473</i>	<i>6,069,207</i>	<i>6,652,821</i>	<i>583,614</i>
Population	394	1,331	937			

(Revised 12/94)

Big Canyon (Statistical Area L2)

Big Canyon is bounded by San Joaquin Hills Road, Jamboree Road, Ford Road and MacArthur Boulevard. The area is identified as the Big Canyon Planned Community. The areas are numbered as on Planned Community Text map. (see Map 4)

1. *Big Canyon Area 1.* This area is designated for Single Family Attached development and is allocated 83 dwelling units, which reflects the existing land use.
2. *Big Canyon Area 2.* This area is designated for Single Family Attached development and is allocated 17 dwelling units, which reflects the existing land use.
3. *Big Canyon Area 3.* This area is designated for Single Family Attached development and is allocated 12 dwelling units, which reflects the existing land use.

EXHIBIT 11

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**T 14a**

June 21, 2007

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District (Orange County)
Teresa Henry, District Manager, South Coast District
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst

SUBJECT: City of Newport Beach Land Use Plan Amendment NPB-MAJ-1-06
Part A (Marriott Hotel VSC to MDR/Santa Barbara Condominiums)

SUMMARY OF STAFF REPORT**DESCRIPTION OF THE SUBMITTAL**

The amendment that is the subject of this report was submitted as part of a package with other Land Use Plan (LUP) amendments. This report deals only with "Part A" of the amendment. Part A of the amendment consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. (Part B of the amendment was acted on separately at the Commission's July 2006 hearing, and Part C was retracted, in part because the City Council had not authorized its original submittal.) The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property. A corresponding coastal development permit application (5-07-085, Lennar) has been submitted and will be considered at a subsequent hearing.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **DENY** the proposed City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and **APPROVE** the amendment subject to suggested modifications. The motions to accomplish this are found on Page 3.

The major issues raised by this amendment request are adequate provision of visitor-serving commercial development and public access. The proposed land use designation change from Visitor-Serving Commercial to Medium Density Residential would have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. However, with the adoption of the suggested modifications, which include a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land, the proposed land use designation change would not have an adverse affect on priority

NPB-MAJ-1-06 (Part A)

visitor-serving opportunities in the area. The mitigation fee shall be for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. This mitigation fee would fund Phase 2 of the ongoing Crystal Cove Alliance restoration effort of the Historic District at Crystal Cove State Park and which is presently contemplated to provide for the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), Cottage 5, Cottage 45, the garages and creek restoration.

ADDITIONAL INFORMATION

For further information, please contact Ryan Todaro at the South Coast District Office of the Coastal Commission at (562) 590-5071. The proposed amendment to the Land Use Plan (LUP) of the City of Newport Beach Local Coastal Program (LCP) is available for review at the Long Beach Office of the Coastal Commission or at the City of Newport Beach Planning Department. The City of Newport Beach Planning Department is located at 3300 Newport Boulevard in Newport Beach. Homer Bludau is the contact person for the City of Newport Beach, and he may be reached by calling (949) 644-3000.

EXHIBITS

1. City Council Resolution No. 2006-02 approved January 10, 2006
2. City Council Resolution No. 2006-26 approved March 28, 2006
3. Vicinity Map (Newport Center)
4. Land Use Map
5. Vicinity Map (Crystal Cove State Park)
6. Site Map (Crystal Cove State Park)
7. City of Newport Beach letter

**I. COMMISSION RESOLUTION ON CITY OF NEWPORT BEACH
LOCAL COASTAL PROGRAM AMENDMENT 1-06 (PART A)**

Motion #1

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted."*

Staff Recommendation for Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolutions and findings. The motion to certify as submitted passes only upon affirmative vote of a majority of the appointed Commissioners.

Resolution for Denial

The Commission hereby **DENIES** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A as submitted and adopts the findings stated below on the grounds that the amendment will not meet the requirements of and is not in conformity with the policies of Chapter 3 of the California Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act as there are feasible mitigation measures and alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the land use plan amendment as submitted.

Motion #2

*"I move that the Commission **CERTIFY** the City of Newport Beach Land Use Plan Amendment NPB MAJ 1-06 Part A if modified as suggested in this staff report."*

Staff Recommendation for Certification

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the land use plan with suggested modification and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of the appointed Commissioners.

Resolution for Certification with Suggested Modifications

The Commission hereby certifies the Land Use Plan Amendment NPB MAJ 1-06 Part A for the City of Newport Beach if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested

complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

II. PROCEDURAL PROCESS (LEGAL STANDARD FOR REVIEW)

A. Standard of Review

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states: *"The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission."*

B. Procedural Requirements

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, a local government's resolution for submittal of a proposed LUP amendment must indicate whether the local coastal program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City of Newport Beach's submittal indicates that this LCP amendment, if approved as submitted, will take effect upon Commission certification. Approval of the amendment with modifications will require subsequent action by the City.

III. BACKGROUND

The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982 and comprehensively updated October 13, 2005. The subject amendment was initially submitted by the City of Newport Beach on March 6, 2006. On March 15, 2006, Coastal Commission staff notified the City of Newport Beach that the submittal was incomplete and that additional information would be required to complete the submittal. City staff submitted the information on April 14, 2006. On May 18, 2006, Coastal Commission staff notified the City that the amendment request was complete. The Commission approved a request for a one-year (1) time extension of the amendment on June 13, 2006, which gives the Commission until July 13, 2007 to act on this submission. Part B of the amendment request, which involved a change in the

land use designation of another parcel from Medium Density Residential to Open Space, was approved by the Commission on July 12, 2006. Part A of the amendment request is now being submitted for Commission action. Part A involves a change in land use designation at 900 Newport Center Drive from Visitor-Serving Commercial to Medium Density Residential.

IV. SUMMARY OF PUBLIC PARTICIPATION

The City of Newport Beach approved this segment of the Land Use Plan amendment request (Part A) through a City Council public hearing on January 10, 2006. The item was originally scheduled for the Council hearing of November 22, 2005, but the item was continued to the December 13, 2005 hearing and finally approved on January 10, 2006. It was approved through City Council Resolution No. 2006-02, which approved General Plan Amendment No. 2004-005 and Local Coastal Plan Amendment 2005-001 (Exhibit 1). Prior to either the City Council approving the LUP amendment request, or the Planning Commission voting to recommend that the City Council do so, the Planning Commission held a public hearing on November 3, 2005. Notice was provided for both entities' hearings. Notice of the City Council's public hearing was mailed and posted on November 14, 2005 and published in the local newspaper on November 12, 2005. The City Council approved a subsequent resolution (Resolution No. 2006-26) on March 28, 2006 to correct procedural deficiencies in the original resolution related to the Coastal Act requirements (Exhibit 2).

One letter of opposition was received at the local level. The letter expresses concerns about increased density at the subject site. No oral comments were received during the public hearings held at the local level.

V. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modifications to the proposed LUP amendment be adopted.

Suggested Modification #1

Add the following new Land Use Plan policy to Chapter 2, Section 2.3 (Visitor-Serving and Recreational Development), Sub-section 2.3.1 (Commercial) of the Coastal Land Use Plan after existing policy number 2.3.1-7:

- 2.3.1-8 LCP Amendment No. 2005-001 (NPB-MAJ-1-06 part A) to the Coastal Land Use Plan changing a portion of land, not to exceed 4.25 acres in size, designated Visitor-Serving Commercial (CV) in Newport Center to a residential designation shall require a payment of a fee to mitigate for the loss of visitor-serving land. The mitigation fee shall be used for the protection, enhancement and provision of lower-cost visitor-serving uses

at Crystal Cove State Park. The mitigation fee shall be in the amount of \$5,000,000.00 (five million dollars) to off-set the loss of the priority land use in Newport Center. The mitigation fee shall be paid prior to issuance of any coastal development permit granted for any residential project within the newly designated area and to an entity, identified by the permitting agency, capable of implementing the mitigation at Crystal Cove State Park. Until paid in accordance with the terms and conditions of the coastal development permit, the amount shall be increased every July 1st by an amount calculated on the basis of the percentage change from the year 2007 in the California Consumer Price Index for Urban Consumers as determined by the entity that grants the coastal development permit.

The addition of this new policy may affect the numbering of subsequent LUP policies when the City of Newport Beach publishes the final LUP incorporating the Commission's suggested modifications. This staff report will **not** make revisions to the policy numbers. The City will make modifications to the numbering system when it prepares the final LUP for submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.

Suggested Modification #2

The City shall submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

VI. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF NEWPORT BEACH LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED

A. Amendment Description

The proposed submittal consists of a request by the City of Newport Beach to change the land use designation of a 4.25 acre area (presently occupied by tennis courts) at the Marriott Hotel from Visitor-Serving Commercial to Medium Density Residential, at 900 Newport Center Drive, Newport Beach, Orange County. Approximately 9.54 acres of Visitor-Serving Commercial (VC) would remain on site in Newport Center after the land use designation change. The proposed land use change would allow for the construction of condominiums (or other medium density residential) on the subject property.

B. Findings For Denial

The Commission hereby finds and declares as follows:

Site Description and Land Use Designation

The proposed land use redesignation will affect only one site—900 Newport Center Drive in the City of Newport Beach, Orange County. The 4.25-acre site is located in the Newport Center/Fashion Island area of the City, inland of Pacific Coast Highway (Exhibit 3). The site is currently operated as a private tennis club used by members and guests of the Newport Beach Marriott Hotel. There are eight outdoor tennis courts, a clubhouse and ancillary uses on the property. The property owner proposes to subdivide the subject site from the larger hotel parcel and develop a 79-unit condominium project.¹

The site is currently designated Visitor-Serving Commercial (CV-B) in the City's Certified Land Use Plan, as depicted in Exhibit 4. The site is surrounded by a golf course to the west and north, hotel development to the south, and commercial offices to the east.

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

¹ Coastal Development Permit Application 5-07-085 (Lennar), which seeks authorization to develop the condominium project, will be considered by the Commission at a subsequent hearing.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

- 2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*
- 2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Proposed Change in Land Use Designation

The proposed amendment (NPB MAJ 1-06, Part A) involves a request to change the land use designation of a 4.25-acre area of the Newport Beach Marriott Hotel from Visitor Serving Commercial to Medium Density Residential at 900 Newport Center Drive. No other properties are subject to the proposed land use change.

The proposed change will have an adverse affect on priority visitor-serving opportunities in the area. Residential development is a low priority use within the Coastal Zone. The City indicates, however, that the loss of CV-B designated land at this location will not have an adverse affect on visitor-serving commercial or recreational activities.

According to the amendment request, "[t]he property is not located in close proximity to coastal resources, coastal recreational use or the water and the change in land use does not impact the adjacent visitor serving uses other than to eliminate the accessory tennis courts, which is not a coastal dependent recreational activity." Although the tennis courts are not typically considered a "coastal dependent" activity, tennis is a recreational activity, and the site is part of a larger commercial facility (Marriott Hotel) that serves visitors to the coast. Thus, although currently operated as a private tennis club serving only members and guests of the Newport Beach Marriott Hotel, the club is nevertheless a visitor-serving recreational offering. In addition, the hotel is located in close proximity to popular visitor destinations, such as the Newport Dunes, Balboa Island and the beach. The site is located in a highly visible, well-traveled location and could potentially support some form of commercial and/or recreational development in the future. Re-designation of the site for residential development now results in lost future opportunity for expanded, enhanced or even lower cost visitor-serving uses at the site.

The City states that the loss of this visitor-serving commercial site as a result of the requested amendment would not significantly reduce the amount of visitor-serving land in the City. The City concludes that the project represents a 2% reduction in visitor serving uses based on a table showing the portion of land currently designated as visitor serving commercial and what will remain after the 4.25-acre site is re-designated. The table is replicated below.

Visitor Serving Commercial Designation	Amount of Land
CV-A (0.5—0.75)	7.65 acres
CV-B (0.5—1.25)	42.90 acres
Newport Coast Planned Community	153.00 acres
CITYWIDE TOTAL:	203.55 acres
Less project	-4.25 acres
REMAINING CITYWIDE TOTAL:	199.30 acres
	(2% loss of CV-B)

The City included the Newport Coast Planned Community in the above-referenced tabulation. However, Newport Coast is covered by a segment of the County of Orange certified LUP and is not within the boundary of the City of Newport Beach certified LUP. As such, the 153.00 acres of visitor serving commercially designated area referred to in the table is not covered by the LUP that is the subject of the current amendment request. In actuality, the 4.25-acre loss represents an 8.4% $[4.25/(7.65+42.90)]$ --not 2%-- reduction in visitor-serving land in the portion of the City covered by this LUP.

In addition, the subject site is one of only five sites designated Visitor-Serving Commercial (CV) in the City's certified LUP. Many land uses that are in fact visitor-serving are located within the General Commercial (CG) or Neighborhood Commercial (CN) designation and could thus cease to provide a visitor-serving function. According to the LUP, *[t]he CV designation is intended to provide for accommodations, goods, and services intended to primarily serve the needs of visitors of Newport Beach.* Hotels, and their ancillary development, clearly fit this designation and should be protected consistent with Section 30222 of the Coastal Act. The LUP includes policies that encourage visitor-serving and recreational developments that provide public recreational opportunities. Although the tennis courts are part of a private club, they are available for use by hotel guests. Hotel guests are typically members of the public that are visitors to the area.

The agent for the corresponding CDP application states that the tennis courts are underutilized and replacing the courts *"does not remove a publicly accessible, widely-used recreation facility from the coastal zone."* The Commission acknowledges that the property owner is in no way obligated to retain the tennis court use of the site. However, under the current land use designation, the site can only be developed with uses allowed under the CV designation. Commercial development of the site could serve potential visitors to the coast. The location is conducive to commercial recreational development and consistent with the adjacent hotel use and the nearby commercial development. Residential development at the subject site would serve no purpose to members of the visiting public and could potentially establish a precedent for residential conversions in the other CV designated areas.

As submitted, the proposed land use conversion proposed as Part A of the City's amendment request is inconsistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be *"protected, encouraged, and, where feasible, provided."* The proposed amendment will also have an adverse affect on the priority *"visitor-serving commercial recreational facilities"* to be provided under

Section 30222 of the Coastal Act. Therefore, Part A of the amendment must be denied, as submitted.

C. Findings for Approval with Suggested Modifications

The Commission hereby finds and declares as follows:

Coastal Act Policies

As stated previously, the Coastal Act is the standard of review in the current analysis. The Coastal Act encourages the provision of lower cost visitor and recreational facilities and prioritizes visitor-serving commercial development over residential development. The proposed LUP amendment is not in conformity with the public access and recreation policies of the Coastal Act relating to the provision of visitor serving development. Applicable provisions of the Coastal Act include the following:

Section 30213 states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Applicable Land Use Plan Policies from the certified Coastal Land Use Plan

2.3.1-3 *On land designated for visitor-serving and/or recreational uses, give priority to visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over other commercial uses, except for agriculture and coastal-dependant industry.*

2.3.3-3 *Encourage visitor-serving and recreational developments that provide public recreational opportunities.*

Mitigation to Replace the Loss of Visitor-Serving Recreation

In order for the proposed land use conversion from Visitor-Serving Commercial to Medium Density Residential to be found consistent with the Coastal Act, it must be appropriately mitigated since the proposed land use change would allow for residential development on the subject property, which is not a priority use within the Coastal Zone. The proposed amendment is a project specific request. A corresponding coastal

development permit application (5-07-085) for the construction of condominiums at this location has been submitted and will be considered at a subsequent hearing. It should be noted that with this corresponding project, Marriott's property would not lose any entitlement to the 611 rooms allowed on the site (currently, according to the applicant, there are 532 rooms with a 75% occupancy).

Ideally, the loss of area designated for visitor serving uses should be offset by re-designating some other equivalent or superior area within the City that is designated with a low priority land use, to a visitor serving use. The applicant (Lennar) for the corresponding coastal development permit application undertook an extensive search for potential visitor-serving properties within the coastal zone in Newport Beach to mitigate for the change in land use. In reviewing sites of similar size, the applicant determined that no properties were suitable, the result of Newport Beach being nearly built-out. In addition, the applicant determined that the acquisition of individual parcels totaling 4.25 acres was not an attractive prospect; while residential property could be acquired, this would result in sporadic rezoning, incompatible uses adjacent to existing uses and proved economically unfeasible given the property values in Newport Beach.

As a result, Lennar, in consultation with the City, proposed an alternative; to pay a fee to mitigate for the loss of visitor-serving land. The proposal is to provide funding for the protection, enhancement and provision of lower-cost visitor-serving uses at Crystal Cove State Park in the amount of \$5,000,000.00 (five million dollars). This mitigation fee would off-set the loss of the priority land use in Newport Center and provide funding for Phase 2 of the ongoing effort by State Parks and their concessionaire, Crystal Cove Alliance, to restore the Historic District within Crystal Cove State Park. Phase 2 is presently contemplated to include the completion of the Outdoor Educational Commons (Cottages 40, 42, 43 and 44), the Beach Museum (Cottage 13), overnight accommodations in Cottage 5, Cottage 45, and the garages and creek restoration (Exhibit 6). Therefore, the Commission is requiring a suggested modification that would implement this alternative. Suggested Modification #1 would require the City to add a new Land Use Plan policy that requires a payment of a fee to mitigate for the loss of visitor-serving land. The policy includes provisions to adjust the mitigation fee to account for inflation. Implementation of the mitigation requirement would be carried out through the coastal development permit process.

The Crystal Cove Historic District is a 12.3-acre coastal portion of the 2,791-acre Crystal Cove State Park, which is located along the southeast coast of the City of Newport Beach. The federally listed Historic District is an enclave of 46 vintage rustic coastal cottages originally built in the 1920's and 1930's nestled around the mouth of Los Trancos Creek. It is one of the last remaining examples of early 20th century Southern California coastal development.

California State Parks has completed Phase I of the restoration of the Historic District, which provides cottages for visitor services, educational and community programs, a restaurant, and 13 cottages for overnight use by the public. Cottages available for

overnight rental include studios, one- and two-bedroom houses, and hostel-style dormitories.

Restoration of these historic cottages represents a significant opportunity for lower cost visitor-serving accommodations and associated educational and visitor uses at Crystal Cove State Park, which has become a popular destination of statewide significance for the public, especially since some of the cottages became available for overnight use. Only 22 of the 46 historic cottages have been restored to date. Crystal Cove Alliance, the non-profit cooperating association and concessionaire benefiting Crystal Cove State Park, is currently raising funds to restore the remaining 24 cottages for visitor-serving and overnight accommodation uses. With funding, restoration can begin immediately.

Revised Coastal Land Use Plan Map

Since the proposed amendment would change the land use designation of the 4.25 acre site, the Coastal Land Use Plan Map would need to be updated. Therefore, the Commission is requiring suggested modification #2, which would require the City to submit a revised Coastal Land Use Plan Map (i.e. that map referenced in Chapter 2, subsection 2.1.2 of the Coastal Land Use Plan), which reflects the land use change approved by the Commission through this amendment.

Conclusion

The proposed amendment, as modified through the suggested modifications, is consistent with Section 30213 of the Coastal Act, which requires lower cost visitor and recreational facilities be "*protected, encouraged, and, where feasible, provided.*" In addition, the proposed amendment, as modified through the suggested modifications, would not have an adverse effect on the priority "*visitor-serving commercial recreational facilities*" to be provided under Section 30222 of the Coastal Act.

VII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with a local coastal program (LCP). The Commission's Local Coastal Program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA. As part of the City's review of this project, a Mitigated Negative Declaration (MND) was prepared for the proposed project and found that with mitigation, the project's environmental impacts would be reduced to less than significant levels.

EXHIBIT 12

CITY OF NEWPORT BEACH

TO: City Council

FROM: Planning Department

SUBJECT: Financial obligations of the Marriott Hotel to the improvement of the City's Traffic and Circulation System required as a result of the proposed hotel expansion.

In our initial staff report of February 14, 1983, it was indicated that the Marriott Hotel, as a result of the approval of the Traffic Study and Site Plan Review No. 29, would be required to pay to the City certain sums of money for the purpose of constructing sound-attenuation barriers, traffic signals and traffic circulation improvements. In addition the Marriott Corporation was also required, as a result of the approval of the General Plan Amendment, to pay to the City a negotiated sum of money towards the construction of additional circulation system improvements. The purpose of this supplemental report is to summarize for the City Council what the actual contribution amounts to.

Noise walls adjacent to Eastbluff, Irvine Terrace and West Newport	\$130,200.00
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Traffic signal at the intersection of Santa Barbara Drive and Newport Center Drive (50%)	40,000.00
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Traffic circulation system improvements PCH/Orange Street, PCH/Prospect Street, PCH/Bayside Drive and Jamboree Road/Ford Road	242,000.00
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SUB TOTAL	\$412,000.00
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Additional circulation system improvements calculated as representing the project's percentage of total traffic added to the circulation system at General Plan buildout and applied toward the City's share of the Coast Highway widening project between Mac Arthur Boulevard and Bayside Drive (13.7% of \$1,400,000.00)	\$191,800.00
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GRAND TOTAL	\$603,800.00
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TO:

City Council - 2.

It is recommended that the City Council's approval of this project require the deposit of \$361,800.00, noise wall, traffic signal and the additional circulation system improvement funds, prior to the issuance of any grading or building permits, and the remaining \$242,000.00, TPO circulation system improvements, be deposited prior to occupancy of any portion of the project's facilities, other than those designed for parking.

Respectfully submitted,


JAMES D. HEWICKER
Planning Director

JDH/kk



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Correspondence

Item No. 2b

Newport Beach Country Club

PA2005-140

DATE: November 14, 2011

TO: Kimberly Brandt, Community Development Director
Rosalinh Ung, Associate Planner

FROM: Leonie Mulvihill, Assistant City Attorney

A handwritten signature in black ink, appearing to be "LM", is written over the name Leonie Mulvihill.

MATTER: Golf Realty Fund: Development Agreement
No.: A10-00773

SUBJECT: Transmittal of Development Agreement

Attached please find a copy of the proposed Development Agreement between the City of Newport Beach and Golf Realty Fund.

LM

[A10-00773] BrandtK-UngR from LM 11.14.11 re Transmittal of DA

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

GOLF REALTY FUND

**CONCERNING PROPERTIES LOCATED IN NEWPORT CENTER
WITHIN THE
NEWPORT BEACH COUNTRY CLUB PLANNED COMMUNITY DISTRICT**

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the __ day of _____, 2011 (the "Agreement Date"), and is being entered into by and between the City of Newport Beach ("City"), and Golf Realty Fund, a California limited partnership "Owner"). City and Owner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Owner owns a fee interest in title to that certain real property located in the City of Newport Beach, County of Orange, State of California which is more particularly described in the legal description attached as Exhibit "A" and depicted on the site map attached hereto as Exhibit B (the, "Property"). The Property is located within and consists of approximately 145 acres of the area shown on the City's Zoning Map as the Newport Beach Country Club Planned Community District.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement, Owner has agreed to provide the following significant public benefits as consideration for this Agreement: Development of Visitor-Serving Uses within the Coastal Zone, and other economic contributions including the payment of a Public Benefit Fee. _____.

E. This Agreement is consistent with the City of Newport Beach General Plan ("General Plan"), including without limitation the General Plan's designation of the Property as "PR (Parks and Recreation)" the Coastal Land Use Plan's designation as "OS (Open Space)" and the Newport Beach Country Club Planned Community District (PA 2008-152) that was adopted in 1997 by Ordinance No. 97-10 in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and

general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration for the Newport Beach Country Club Planned Community District (PA 2008-152) approved by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On _____, 201_, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 201_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Owner, and members of the public. On _____, 201_, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Owner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*) ("CEQA Guidelines"), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed in Section 9.1 of this Agreement.

"Claim" shall have the meaning ascribed in Section 9.1 of this Agreement.

"CPI Index" shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

"Cure Period" shall have the meaning ascribed in Section 7.1 of this Agreement.

"Default" shall have the meaning ascribed to that term in Section 7.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Development Agreement Ordinance" shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

"Development Agreement Statute" shall mean California Government Code Sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean the Newport Beach Planned Community District, Vesting Tentative Tract Map, and _____ Development Plan approved by the City Council on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

"Development Regulations" shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that impairs or restricts Owner's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Owner in writing: the General Plan; the Development Plan; and, to

the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe

Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, as amended through the Agreement Date but excluding any amendment after the Agreement Date that impairs or restricts Owner’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Owner. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Owner” shall mean Golf Realty Fund, a California limited partnership and any successor or assignee to all or any portion of the right, title, and interest of Golf Realty Fund _____ in and to ownership of all or a portion of the Property.

“Party” or “Parties” shall mean either City or Owner or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that Owner is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Owner is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have

the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City’s zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Owner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Owner and each person executing this Agreement on behalf of Owner hereby represents and warrants to City as follows: (i) that Owner is the owner of the fee simple title to the Property; (ii) Owner or any co-owner comprising Owner is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Owner or any co-owner comprising Owner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Owner to enter into this Agreement have been taken and that Owner has the legal authority to enter into this Agreement; (v) that Owner’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Owner or any person or entity comprising Owner has to any third party; (vi) that neither Owner nor any co-owner comprising Owner is the subject of any voluntary or involuntary petition; and (vii) that Owner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting Owner’s authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Owner's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Effective Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; (iii) as to any separate legal lot within the Property (but not as to the balance of the Property or the portion thereof that remains subject to this Agreement at such time), upon the "Lot Termination Date" (defined below); or (iv) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term "Lot Termination Date" for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year), individually or in a "bulk" of four or fewer lots, to a member of the public or other ultimate user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Owner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Owner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee")

in the sum of (i) Ninety-three thousand _____ Dollars (\$ 93,000 _____) per each residential dwelling units; and (ii) Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse; and (iii) Ten dollars (\$10) per square foot of new construction to the existing tennis clubhouse, with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. Owner shall pay the Public Benefit Fee at the following time(s): (i) As to the residential dwelling units, at the issuance of the building permit for each individual residential unit; and (ii) As to the golf clubhouse and tennis clubhouse construction, at the time each building permit is issued. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. Owner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Owner's vesting rights to be acquired hereunder, and that Owner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Owner's default, if Owner shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

3.2 Other Public Benefits.

The development of the Project will include the addition of additional Visitor-Serving Uses consistent with the City's Coastal Land Use Plan and will provide a unique amenity for those visitors whose interests include tennis. It is anticipated that the Property will continue to host numerous events of significant social and economic benefit to the City such as the Toshiba Classic and other events to the benefit of the City, its citizens, businesses and charitable institutions.

4. Development Project.

4.1 Applicable Regulations; Owner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Owner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Owner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Owner has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Owner represents and City acknowledges that Owner would not make these expenditures without this Agreement, and that Owner is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Owner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, Owner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any

ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Owner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Owner deems appropriate within the exercise of Owner's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Owner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Owner shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Owner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Owner shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to Owner and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Owner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Owner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Chapter 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Owner's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Owner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Owner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Owner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process in a prompt manner Owner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule, regulation, program, or official policy would result in the impairment of Owner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Owner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of Owner or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

4.4 Tentative Subdivision Maps.

City agrees that Owner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code sections 66498.1-66498.9 and City of Newport Beach Municipal Code chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, shall be extended for the Term of this Agreement.

5. Amendment or Cancellation of Agreement.

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of Owner.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be

enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of Owner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Owner (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Owner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Owner is required to demonstrate good faith compliance with the terms of the Agreement. Owner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Owner has, for the period under review, complied with the terms of this Agreement. If the City Council finds that Owner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Owner has not so complied, written notice shall be sent to Owner by first class mail of the City Council's finding of non-compliance, and Owner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Owner, Owner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Owner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Owner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Owner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by Owner.

If Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Owner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Owner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Owner's appeal the City Council concludes that Owner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Owner's appeal is communicated to Owner.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Owner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Owner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Owner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Owner. Any such judicial challenge must be brought within thirty (30) days of service on Owner, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Owner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Owner may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific

performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Owner's performance hereunder shall neither be a Owner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Owner's option (and provided Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Owner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Owner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner or City for such efforts. For the above reasons, City and Owner agree that damages would not be an adequate remedy if either City or Owner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate Owner if City fails to carry out its obligations under this Agreement or to compensate City if Owner fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from Owner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for Owner's Default.

In the event of any Default by Owner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Owner's Default without recourse from Owner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Owner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Owner.

10.1 Indemnity Arising From Acts or Omissions of Owner.

Owner shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Owner or Owner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Owner relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Owner shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against

City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify Owner of any such Claim and City shall cooperate with Owner in the defense of such Claim. If City fails to promptly notify Owner of such Claim, Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Owner is so notified and if City fails to cooperate in the defense of a Claim Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Owner's indemnity obligation, provided that such counsel shall reasonably cooperate with Owner in an effort to minimize the total litigation expenses incurred by Owner. In the event either City or Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Owner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Owner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Owner in connection with Owner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Owner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Owner's fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "Owner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision

ordinance and any such Transfer shall include the assignment and assumption of Owner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Owner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Owner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Owner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Owner assigns to the successor Owner and the successor Owner assumes from the transferring Owner all of the rights and obligations of the transferring Owner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Owner's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the transferring Owner shall continue to be jointly and severally liable to City, together with the successor Owner, to perform all of the transferred obligations set forth in or arising under this Agreement unless the transferring Owner is given a release in writing by City, which release shall be only with respect to the portion of the Property so Transferred in the event of a partial Transfer. City shall provide such a release upon the transferring Owner's full satisfaction of all of the following conditions: (i) the transferring Owner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Owner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Owner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Owner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Owner to City to secure performance of the successor Owner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Owner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Owner or other affirmative covenants of Owner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Owner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Owner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt

showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY: City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to: City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO OWNER: Golf Realty Fund
One Upper Newport Plaza
Newport Beach, California 92660
Attn: Robert O Hill

With a copy to: Tim Paone
Theodora Oringer PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions

as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Owner shall not receive any of the benefits of this Agreement if any of Owner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Owner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Owner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Owner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Owner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Owner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Owner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT**

“OWNER”

_____, a _____

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT B

DEPICTION OF PROPERTY

[TO BE INSERTED]

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MICHAEL RECUPERO, ESQ.

Correspondence

Item No. 2c & 3b

Newport Beach Country Club

PA2005-140 and PA2008-152

November 16, 2011

Commissioners, Newport Beach Planning Commission
C/O Ms. Kimberly Brandt and Ms. Marlene Burns
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92663

BY ELECTRONIC MAIL AND U.S. POST (CERTIFIED MAIL)

Re: November 17, 2011 Planning Commission Agenda Items 2 (PA 2005-140) and 3 (PA2008-152)

Dear Commissioners:

This letter is written on behalf of one-half of the ownership of the Newport Beach Country Club and Tennis Club (the "Properties")¹ which you are considering tomorrow night.

Comments on Agenda Item 2 (PA2005-140): Newport Beach Country Club, Inc.

We would reiterate our support for the Newport Beach Country Club, Inc. plan as a reasonable exercise of our tenant's authority to improve the leasehold interest, with the inclusion of the revised frontage road (Attachment 1) as reflected in the most recent staff report.

The Frontage Road. The frontage road is preferable from a planning standpoint, and:

1. Is the preference of the Applicant and the above referenced ownership interests;
2. Has been modified to be one-way, narrowed and provides for more desirable turning movements than originally proposed;
3. Provides a greater landscaping setback from PCH to the parking lot (approximately 20' difference) as compared to the "no frontage road" option;
4. Serves the operational needs of the IBC leasehold as well as the longstanding needs of the adjacent Armstrong Nursery;
5. Is consistent with mandates of the City's traffic engineering constraints.

¹ The Fainbarg Family Trust (managed by Irving Chase), the Mira Mesa Shopping Center-West, and the Mesa Shopping Center-East (managed by Elliot Feuerstein), collectively own 50% of the Properties.



Additionally, Attachment 2, the July 13, 2010 letter from the Tenant to the City, describes why maintaining the frontage road is the most prudent and legally defensible option. This should be considered in conjunction with Attachment 3 which sets out the relevant recorded documents, including the *Termination of Access Easement* document (Recordation No. 19970630399). The *Termination* only purports to conditionally terminate certain historic easements, and not others. Simply stated, the public record suggests that enforceable easement rights to the 26.5-foot easement (See, document Nos. 92-662454 and 93-0139174) continue to exist, in favor of Feuerstein and Fainbarg.

No Encumbrance on Fee Interest. Finally, we understand that the Applicant is required through the IBC Development Agreement to provide security for the leasehold improvements. We understand the Tenant has the right to encumber its leasehold interest, however, we do not consent to any new encumbrance or obligation, recorded or otherwise, which affects the underlying fee.

Comments on Agenda Item 3 (PA2008-152): Golf Realty Fund

We incorporate by reference the earlier letters on file relative to our position on this Planning Application and reiterate our position that Golf Realty Fund lacks the right to unilaterally entitle this property.²

Development Agreement. Inasmuch as the City has been provided with the title report, and the Owner's Agreement, we believe the City's decision to withhold the GRF Development Agreement from our review until yesterday is inequitable and unjustified. The Development Agreement suggests that it is binding on the "Property" as defined in section 2.2. and is required to be recorded. Our review of the law suggests that it be amended to require the consent of the Property owners, not just Golf Realty Fund. It should also set out the City's expectation that future discretionary permits and ministerial (building and grading permits) will require all owners' consent.

Planned Community Text. The current Planned Community Text draft does not adequately provide the owner flexibility to adjust the mixed-use element of the zoning allowed by General Plan Land Use designation MU-H3. As 50% of the ownership of this property has not approved the current development plan, we believe that providing such flexibility, and including a specific provision which allows for staff-level amendment, may ultimately allow the parties and the City to meaningfully address a revised plan on a go forward basis.

² We continue to believe that the City's reliance on the former Newport Beach Municipal Code Section 20.90.030(C) in denying our Client's the right to participate on this project is misplaced when the City is clearly relying on the amended Municipal Code for all other matters related to this project.



Thank you for your consideration.

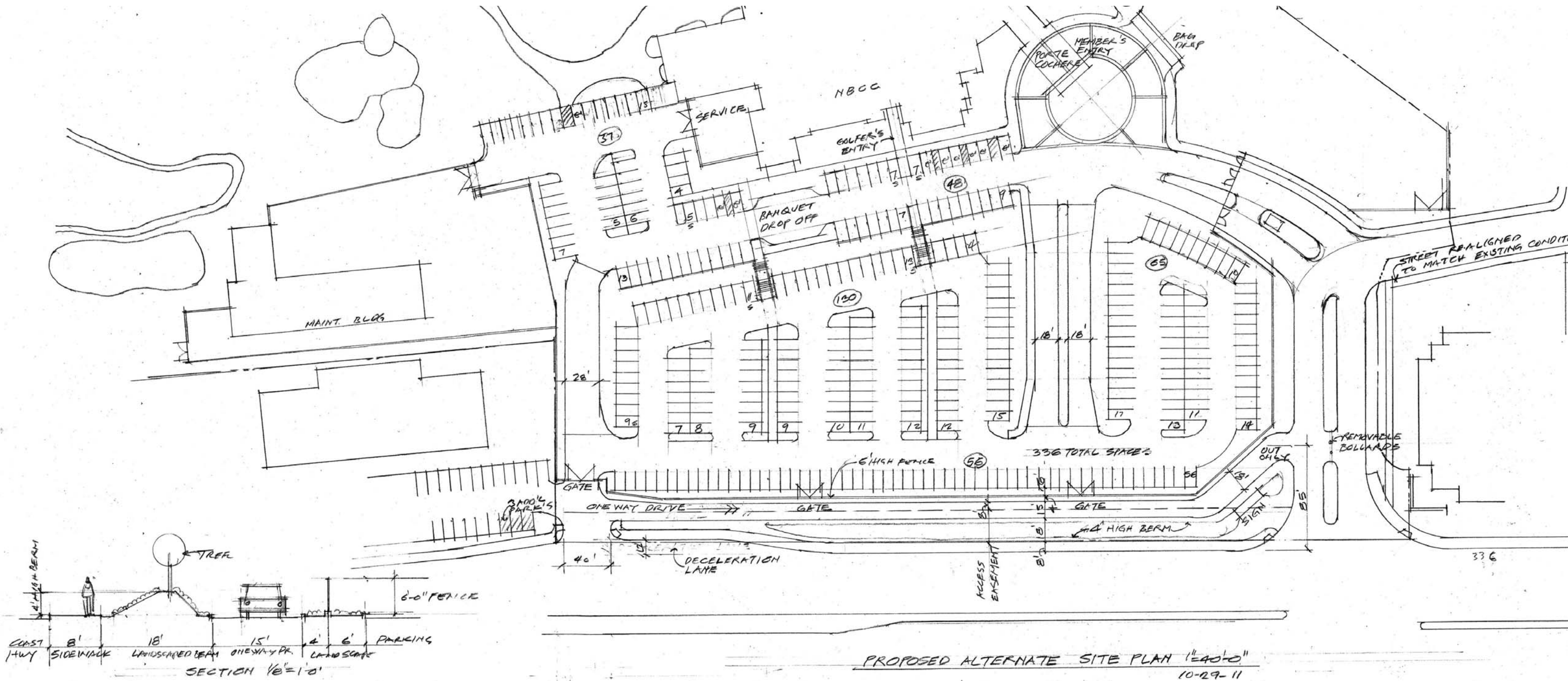
Sincerely,

A handwritten signature in black ink, appearing to be 'WR' with a flourish.

Michael Recupero, Esq.

Ecc:

Commissioner Ameri
Commissioner Kramer
Commissioner Toerge
Commissioner Hawkins
Commissioner Myers
Elliot Feuerstein
Irving Chase
John Olson, Esq.
Tim Paone, Esq.
Leonie Mulvihill, Esq.





July 13, 2010

City of Newport Beach
Attn: Rosalinh Ung
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

Subject: PA 2008–152 Newport Beach Country Club, Frontage Road Access Easement

Dear Ms. Ung:

You recently forwarded to CAA Planning a copy of a First American Title Report (First American Report) dated June 2010 and asked for our review related to the access easement. The First American Report does not identify the existence of an access easement over the frontage road paralleling East Coast Highway. However, the 2008 Fidelity National Title Report (Fidelity Report) submitted by the Newport Beach Country Club (NBCC) does identify this easement. As you know, that easement has been, and continues to be used by motorists who patronize the Armstrong Nursery.

Based on our review of the First American Report, we concur that it does not disclose the 26.5 foot access easement (Instrument No. 93-0139174) identified in the Fidelity Report in favor of Russell Fluter, included as Attachment 1. The Fidelity Report correctly captured the 1993 Easement Deed granted to Russell Fluter by the Irvine Company, included as Attachment 2. As we have previously discussed, a 25 foot access easement over the frontage road held by Messrs Feuerstein and Fainbarg was terminated in 1996. The termination of the 25 foot easement is included as Attachment 3.

Records maintained by the County of Orange Recorder's office show a 2009 quitclaim deed and release of easement (Instrument No. 93-0139174) from Mr. Fluter to Messrs Feuerstein and Fainbarg. The quitclaim deed and release of easement is included as Attachment 4. The County Recorder's office does not show any subsequent action by Mr. Feuerstein or Mr. Fainbarg to terminate the 26.5 foot easement. We can assure the City of Newport Beach that our client, the NBCC, would have gladly foregone the excessive time and resources to produce site plan alternatives retaining the nursery access easement over the frontage road.

You have asked why the 26.5 foot access easement does not show on parcel map 79-704. It is our understanding that parcel maps are not revised or updated to display such easements. This is why the 1980 parcel map does not depict the 26.5 foot easement from 1993. We contacted First American Title Company in an effort to determine why their report does not capture the



Ms. Rosalinh Ung
July 13, 2010
Page 2 of 2

26.5 foot access easement over the frontage road, but they have not responded to our inquiry. In an abundance of caution, the City may wish to inquire of Mr. O'Hill whether he has documentation verifying the termination of the 26.5 foot easement following the 2009 release from Mr. Fluter to Messrs Feuerstein and Fainbarg.

Please contact us at your earliest convenience if you have any questions. Thank you.

Sincerely,

CAA PLANNING, INC.


Shawna L. Schaffner
Chief Executive Officer

cc: Mr. Dave Wooten
Mr. Patrick Alford

Attachments: 1. Excerpt from 2008 Fidelity National Title Report showing 26.5 foot access easement in favor of Russell Fluter
2. 1993 26.5 foot Access Easement Deed
3. 1996 25 foot Access Easement Termination
4. 2009 Quitclaim of Fluter 26.5 foot Access Easement to Feuerstein & Fainbarg



Fidelity National Title Company

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, Fidelity National Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.


The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

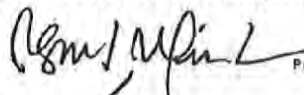
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.


Countersigned

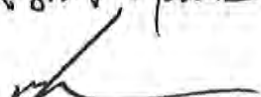


Fidelity National Title Company

BY


President

ATTEST


Secretary



Fidelity National Title Company

ISSUING OFFICE: 1300 Dove Street, Suite 310 • Newport Beach, CA 92660
949 622-5000 • FAX Call for Fax

PRELIMINARY REPORT

Amended

Title Officer: David James

Title No.: 08-**725116135**-A-DJ
Locate No.: CAFNT0972-0972-0051-0725116135

TO: California National Bank
1301 Dove Street, Suite 101
Newport Beach 92660

ATTN: Traci Dawson

SHORT TERM RATE:

PROPERTY ADDRESS: 1600 E. Coast Highway, Newport Beach, California

EFFECTIVE DATE: June 26, 2008, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

ALTA Loan Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**ALLAN FAINBARG AND SARA FAINBARG, as Trustees of THE FAINBARG FAMILY TRUST, dated April 19, 1982, as to an undivided 25% interest;
GOLF REALTY FUND, a California limited partnership formerly known as NEWPORT BEACH COUNTRY CLUB, a California limited partnership, as to an undivided 25% interest;
MIRA MESA SHOPPING CENTER-WEST LLC, as to an undivided 10% interest;
MESA SHOPPING CENTER-EAST LLC, as to an undivided 15% interest;
GOLF REALTY FUND, a California limited partnership, as to an undivided 25% interest, all as tenants in common.**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CJ\JK 07/08/2008

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

AND THAT PORTION OF BACK BAY DRIVE AS SHOWN ON PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 OF PARCEL MAPS, THAT WOULD ATTACH BY OPERATION OF THE LAS TO ABUTTING PROPERTY OWNERS BY VACATION RECORDED October 17, 1989 AS INSTRUMENT NO. 89-558952 OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND. TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK, OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NOS. 93-0158178, 93-0158179 AND 93-0158180, ALL OFFICIAL RECORDS.

APN 442-011-51 AND 52

PARCEL B:

PARCEL 3 OF PARCEL MAP NO. 79-704, AS SHOWN ON A MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFROM AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE

EXHIBIT "A" (continued)

Title No. 08-**725116135**-A-DJ
Locate No. CAFNT0972-0972-0051-0725116135

SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NO. 93-0158178, 93-0158179 AND 93-0158180, ALL OF OFFICIAL RECORDS.

APN: 442-011-53

23. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: The Irvine Company
Purpose: Access, ingress, egress, maintenance, repair and landscaping purposes
Recorded: October 24, 1991, Instrument No. 91-582076, of Official Records
Affects: Parcel A

24. Intentionally Deleted

25. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Russell Fluter, a single man
Purpose: Ingress, egress
Recorded: March 1, 1993, Instrument No. 93-0139174, of Official Records
Affects: The Southwesterly 26.50 feet of Parcel B

26. **Covenants, conditions and restrictions** (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the document

Recorded: March 9, 1993, Instrument No. 93-0158176, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

A mortgage with the power of sale executed by O Hill Properties, a California Limited Partnership, as to an undivided 50% interest; Allan Fainbarg and Sara Fainbarg, as Trustees of the Fainbarg Family Trust dated April 19, 1982 as to an undivided 35% interest; Mesa Shopping Center-East, a California General Partnership, as to an undivided 15% interest, all as tenants in common, as Mortgagor to the Irvine Company, a Michigan Corporation as mortgagee, for the purpose of Securing any and all increment of additional purchase price described in Section 3.4 (A) of and as set forth in the above referred to Declaration.

Was subordinated by an instrument recorded September 27, 1994 as Instrument No. 94-0581056 of Official Records, executed by Allan A. Fainbarg and Sara Fainbarg, trustees of the Fainbarg Family Trust dated April 19, 1982, as to an undivided 25% interest, Mesa Shopping Center-East, a California general partnership, as to an undivided 15% interest, Mira Mesa, Shopping Center-West, a California general partnership, as to an undivided 10% interest, O Hill Properties, a limited partnership, as to an undivided 25% interest, and Newport Beach Country Club, a California limited partnership, as to an undivided 25% interest, all as tenants in common, The Irvine Company, a Michigan corporation and Transamerica Life Insurance and Annuity Company, a California corporation, to the deed of trust which was recorded September 27, 1994 as Instrument No. 94-0581054 of Official Records.

#25

DOC # 93-0139174
01-MAR-1993 09:38 AM

RECORDING REQUESTED BY:
CHICAGO TITLE CO.
WHEN RECORDED MAIL TO:

O'NEIL & MYERS
610 Newport Center Drive
Suite 1700
Newport Beach, California 92660
Attention: Paul M. Mowley, Esq.
(415,102-2336)

Recorded in Official Records
of Orange County, California
Los A. Branch, County Recorder
Page 1 of 3 Fees: \$ 11.00
Tax: \$ 0.00

This Easement Deed is exempt pursuant to Section 1-1-167 of the
Transfer Tax Ordinance of the County of Orange.

CONVEYANCE WITHOUT CONSIDERATION - No Tax Due
Charles S. Myers
Attorney

EASEMENT DEED

(Amalgam's)

The undersigned, THE IRVING COMPANY, a Michigan corporation
("grantor"), hereby grants to Russell Fluter, a single man
("grantee"), non-exclusive easements as set forth in that certain
instrument entitled "Declaration of Access Easements" dated as of
September 29, 1992 and recorded on October 1, 1992 as Instrument
No. 92-662482, as amended by that certain First Amendment to
Declaration of Access Easement dated as of October 15, 1992 and
recorded concurrently herewith, over and across that certain real
property described in Exhibit A attached hereto.

Dated: February 12, 1993

THE IRVING COMPANY,
a Michigan corporation

By:

Richard G. Sim,
Executive Vice President

By:

Donald McQuitt,
Vice President



This document filed for record as
an accommodation only. It has not
been examined as to its execution
or as to its effect upon the title.

STATE OF CALIFORNIA

COUNTY OF ORANGE

88.

On February 12, 1993, before me, a Notary Public in and for said state, personally appeared Richard G. Sia and Donald McWitt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which such persons acted, executed the instrument.

WITNESS my hand and official seal.



Bonnie L. Beider
Notary Public in and for
said County and State



EXHIBIT A

DESCRIPTION OF EASEMENT AREA

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

000-1118571

A-1

10/11/18

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NBCC LAND
One Upper Newport Plaza
Newport Beach, CA 92660

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



21.00

19970630399 4:29pm 12/08/97

005 22033011 22 42

T01 6 6.00 15.00 0.00 0.00 0.00 0.00

TERMINATION OF ACCESS EASEMENT

THIS TERMINATION OF ACCESS EASEMENT is made as of November 30, 1996, by ARNOLD D. FEUERSTEIN and ALLAN FAINBARG (collectively referred to as "Owners"), who are the fee owners of the property located at 1500 E. Pacific Coast Highway, Newport Beach, California, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property")

ARTICLE I RECITALS

A. The Property is partially served for ingress and egress by a secondary access road which runs parallel and adjacent to Pacific Coast Highway and is located upon the adjacent Newport Beach County Club property (the "Secondary Access").

B. The Property's rights to use the Secondary Access is by way of that certain non-exclusive easement and right of vehicular and pedestrian ingress and egress set forth in that certain instrument entitled "Declaration of Access Easement" dated as of September 29, 1992 and recorded on October 1, 1992 as Instrument No. 92-662452 in the Official Records of Orange County, California, as amended by that certain First Amendment to Declaration of Access Easement dated as of October 15, 1992 and recorded March 1, 1993 as Instrument No. 93-0139175 in the Official Records, such easement being described on Exhibit "B" attached hereto and incorporated herein by this reference ("the Existing Easement").

C. The City of Newport Beach has requested that the Existing Easement be abandoned because the Secondary Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway, and Owners concur and are willing to comply with the City's request to abandon the Existing Easement.

D. Owners of the adjacent Newport Beach Country Club property intend to remove the Secondary Access through a portion of the Newport Beach Country Club property described in Exhibit "C" and replace it with landscaping along Pacific Coast Highway per Newport Beach Country Club Master Plan, Tentative Tract 15348, and a landscape plan approved by the City of Newport Beach. The result will be a significant aesthetic improvement along Pacific Coast Highway.

ARTICLE II
TERMINATION OF ACCESS EASEMENT

1. Owners hereby terminate and relinquish their rights in the Existing Easement.

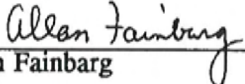
2. Owners' termination of the Existing Easement is conditioned on the City of Newport Beach not prohibiting ingress and egress to the Property primary and direct access from the existing two Pacific Coast Highway curb cuts in front of the Property which have been in use for many years.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written.

OWNERS:



Arnold D. Feuerstein

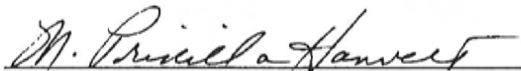


Allan Fainbarg

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Allan Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

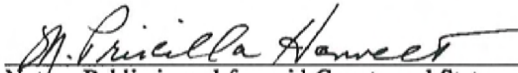

Notary Public in and for said County and State

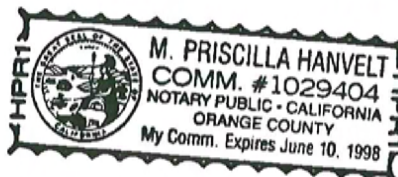


STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public in and for said County and State



terminat.acc

DESCRIPTION OF PROPERTY

Lot 1 of Tract No. 11937, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 656, Pages 24 through 29, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County, as corrected by that Tract or Parcel Map Certificate of Correction recorded February 5, 1991 as Instrument No. 91-052940 of Official Records.

EXHIBIT "A"

terminat.acc

NON-EXCLUSIVE EASEMENT FOR
INGRESS AND EGRESS PURPOSES

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 25.00 FEET OF PARCEL 3 OF PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

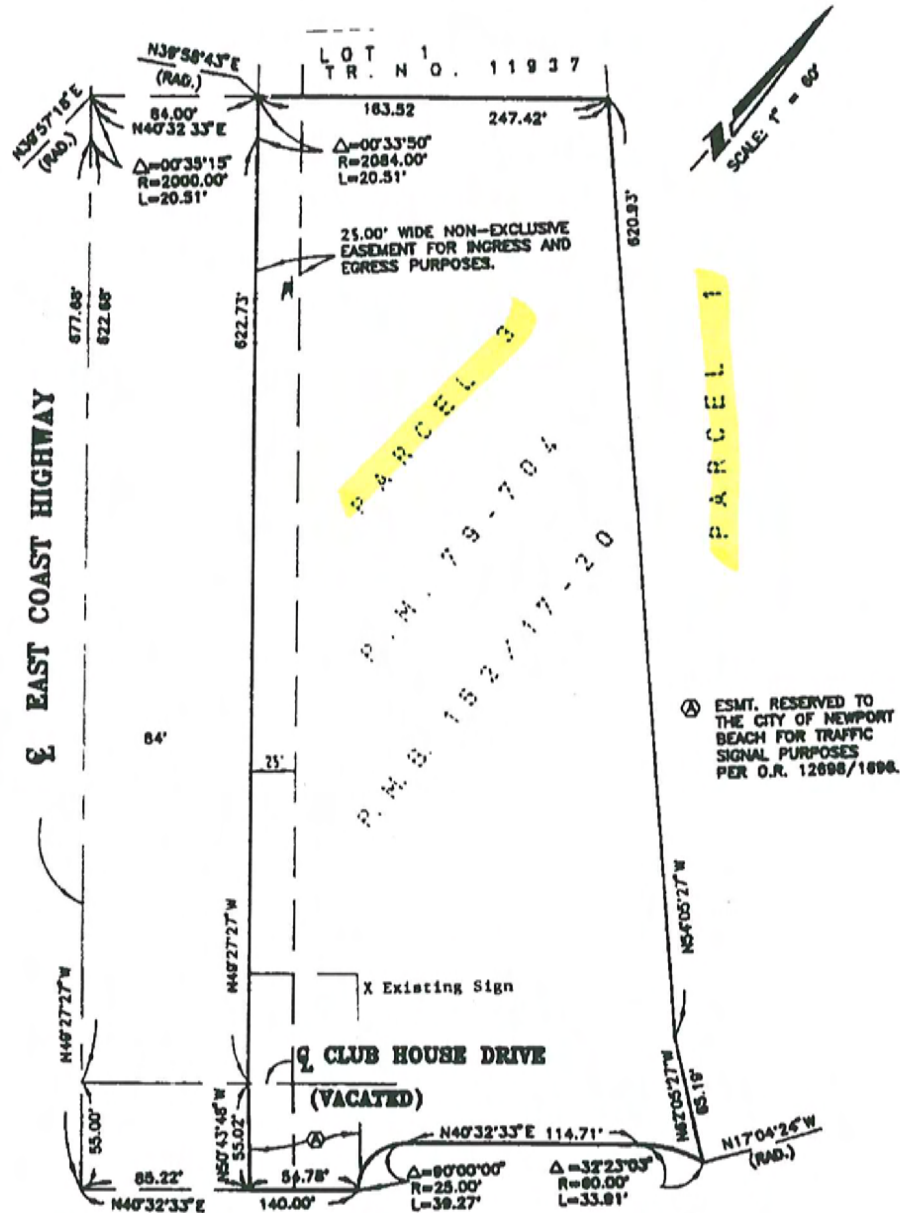


EXHIBIT "B"

terminat.acc

NEWPORT BEACH COUNTRY CLUB

(Portion containing Secondary Access)

Parcel 3 and Parcel 1 of Parcel Map No. 79-704, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 152, Pages 17 through 20, inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

EXHIBIT "C"

terminat.acc

Being Requested By
Fidelity National Title

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
DOCUMENT:**

Arnold D. Feuerstein, Trustee
Allan Fainbarg, Trustee
129 W. Wilson St., Ste. 100
Costa Mesa, CA. 92627
Attention: Irving M. Chase, Esq.

RFluter - DS

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



32.00

2009000658760 02:18pm 12/08/09

106 402 Q01 3

0.00 0.00 0.00 20.00 8.00 0.00 0.00 0.00

Space Above This Line for Recorder's Use Only

MAIL TAX STATEMENTS TO:

Documentary Transfer Tax: \$0

The value and consideration is less than \$100.00 and there is no additional consideration received by the Grantor, R & T 11911

QUITCLAIM DEED AND RELEASE OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **RUSSELL FLUTER**, an individual ("Grantor"), remises, releases and quitclaims to **ARNOLD D. FEUERSTEIN, TRUSTEE OF THE FEUERSTEIN COMMUNITY PROPERTY TRUST** dated **April 13, 1982**, an undivided one-half interest, and **ALLAN FAIBARG, TRUSTEE OF THE FAIBARG FAMILY** dated **April 19, 1982**, an undivided one-half interest, (collectively, "Grantee"), all of the Grantor's right, title, and interest in and to that certain non-exclusive easement granted pursuant to that certain instrument entitled Easement Deed (Amling's) ("Deed") recorded in the Official Records of Orange County, California on March 1, 1993 as Instrument Number 93-0139174, or by any other instrument, as such easement is legally described on Exhibit A ("the Property"), attached hereto and incorporated herein by this reference.

Without limiting the generality of the foregoing, the Grantor hereby releases all rights and obligations associated with the easement pursuant to the Agreement. From and after the date this Quitclaim Deed and Release of Easement is recorded, title to the Easement shall vest in the Grantee.

Grantor has caused this Quitclaim Deed to duly executed on October 23, 2009.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY HAS RECORDED THIS INSTRUMENT
BY REQUEST AS AN ACCOMMODATION ONLY
AND HAS NOT EXAMINED IT FOR REGULARITY
AND SUFFICIENCY OR AS ITS EFFECT UPON
THE TITLE TO ANY REAL PROPERTY THAT
MAY BE DESCRIBED THEREIN.

Russell Fluter
Russell Fluter

EXHIBIT A
Legal Description of Easement

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY

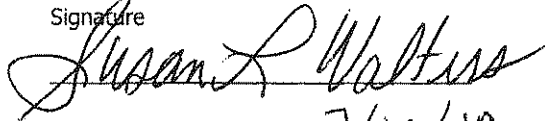
A.P.N.:

File No.: dnehaus (dn)

STATE OF California)SS
COUNTY OF Orange)On 10/23/09, before me, Susan L. Walters, Notary
Public, personally appeared Russell F. Luter, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature

My Commission Expires: 7/10/10

This area for official notarial seal

Notary
Name: Susan L. Walters
Notary Registration
Number: 1675021Notary
Phone: 949 722-7400
County of Principal Place of
Business: Orange

Armstrong (Amling) Access Easement

10/24/2011

Instrument	Parties		Description	Width	Date signed	Date recorded
	Grantor	Grantee				
92-662452	Irvine Company	Amling Nursery Owners	Declaration of access easement (Amling's Nursery)	25 feet	9/29/1992	10/1/1992
92-662454	Irvine Company	Russell Fluter-A single man	Grant Deed subject to the Declaration of access easement dated 9-29-1992, recorded concurrently			10/1/1992
93-0139174	Irvine Company	Russell Fluter-A single man	Easement Deed (Amling's)	26.5 feet	2/12/1993	3/1/1993
93-0139175	Irvine Company	Russell Fluter-Amling Nursery Owner	First Amendment to access Easement 92-662452	Increased to 26.5 feet	10/15/1992	3/1/1993
93-0158180	Irvine Company	Fainbarg	Grant Deed	No width specified	3/3/1993	3/9/1993
19970630399	Feuerstein & Fainbarg		Termination of Access Easement 92-662452 & 93-0139175	Document references easement (25 ft.) and amendment (to 26.5 ft.);therefore termination is 26.5 ft.	12/13/1996	12/8/1997
19960167327	Russell Fluter	Fainbarg	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
19960167328	Russell Fluter	Feuerstein	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
2009000658760	Russell Fluter	Feuerstein & Fainbarg	Quitclaim Deed and Release of Easement	Release 93-0139174 to Feuerstein and Fainbarg	10/23/2009	12/8/2009

Burns, Marlene

From: Ung, Rosalinh
Sent: Wednesday, November 16, 2011 3:06 PM
To: Burns, Marlene
Subject: GRF - Compromise Plan #11
Attachments: 11.11.16 LS response to IBC-LeeSak comments.doc; ATT28003202.htm; 11.11.15 Comp11.pdf; ATT28003203.htm

For admin record...

From: Leland Stearns [<mailto:LELAND@STEARNSARCHITECTURE.COM>]
Sent: Wednesday, November 16, 2011 1:04 PM
To: Douglas Lee
Cc: Ung, Rosalinh; Brandt, Kim; Tim Paone; Byron de Arakal; Robert O Hill; Campbell, James; Michael Toerge; Bradley Hillgren; Robert C. Hawkins; Fred Ameri; Kory Kramer; Dave Wooten; jjohnson@balboabayclub.com; pdickey@newportbeachcc.com
Subject: GRF/IBC Compromise Plan #11

Per Robert O Hill's request I am sending you Compromise Master Plan #11 and a written response to your memo of Nov. 2, 2011.

November 16, 2011

BY EMAIL:

Doug Lee, AIA
Lee & Sakahara Architects
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Re: NBCC PCD Compromise 11

Attached is Master Plan Compromise 11 responsive to your comment letter dated November 2, 2011.

In my professional opinion, 1) Master Plan Compromise 11 shows that the IBC Golf Clubhouse and the GRF Golf Parking Lot Design can easily work together with IBC's cooperation and 2) GRF's Golf Parking Lot design shown on Master Plan Compromise 11 is a much better aesthetic and pedestrian solution than IBC's golf parking lot.

Below is a detailed response to your letter with their comments shown first in black followed by my responses in blue italics.

- Plan indicates 334 parking spaces but actual count is 327 plus 5 spaces in the Maintenance Yard total count = 332 spaces

Please see the attached Master Plan Compromise 11 where an additional 7 parking spaces have been added and 5 spaces in maintenance yard eliminated for a total of 334. (Parking Required is 244 spaces) If the GRF Golf Parking Lot design is adopted GRF has agreed to make available to IBC the non-exclusive parking easement over Corporate Plaza West for weekends and holidays for an additional 554 additional parking spaces.

- Plan does not address existing access easement. If easement is maintained, this will further reduce parking spaces.

The Frontage Road Easement has been terminated. The City of Newport Beach Planning Commission at their October 2011 hearing indicated that they unanimously desire a golf parking lot site plan without the hazardous and unsightly Frontage Road. If Frontage Road remains the primary loss will be to the significant landscape buffer along PCH and traffic safety. Until that Public hearing IBC has always indicated that IBC preferred a site plan without the Frontage Road.

- Plan does not allow semi-trucks to maneuver in the parking lot. No staging areas for major events.

Please see the LSA Study and Stearns Architecture prior Major Tournament Staging Plan demonstrating that trucks can maneuver in the parking lot and staging areas for major events can be accommodated.

- Plan reduces the upper level prime parking by 32 spaces.

The IBC plan has approximately 80 cars in the upper level parking area. The GRF Compromise 11 has 57 cars in the upper level parking area. The GRF plan makes all the parking better and does not have the significant grade difference between prime golf parking and secondary parking shown in the IBC plan requiring stairways with an extensive number of steps from the very large secondary parking area. Master Plan Compromise 11 has 2 additional parking stalls adjacent to the Golf Clubhouse.

- Plan provides only one sidewalk in the parking lot. Travel distance to the sidewalk at the east parking lot is approximately 290' and approximately 230' at the west parking lot. This layout will encourage members to "cut through" the landscaped islands and between cars (shortest path to the front door.

Two more pedestrian sidewalks have been added in attached Compromise 11. The Master Plan Compromise 11 is more pedestrian and golf cart friendly. (See the LSA Study)

- The primary access to parking from the Porte Cochere is offset requiring two turns to access parking lot.

With both the GRF and the IBC plans there are two turns. With Master Plan Compromise 11 there are two turns when leaving the Porte Cochere and going to the parking area. With the IBC's schematic plan there are two turns when leaving the parking area and returning to the Porte Cochere.

- Plan encroaches 10'-20' into the golf course at the 18th green area.

Please see the revised Master Plan Compromise 11 which eliminates encroachment.

- Plan encroaches into Maintenance Yard.

Please see Master Plan Compromise 11, which eliminates this very minor encroachment.

- 5 spaces in the Maintenance yard should be deleted. This space is allocated for golf course maintenance bins.

See attached Master Plan Compromise 11 where the 5 spaces in the Maintenance Yard have been deleted.

- Due to the terraced parking concept, taller plant material will be required to effectively conceal the automobiles. See attached section.

With the terraced design the goal is not to conceal the cars but to mitigate the "Sea of Asphalt" and to create a far more aesthetic environment and public view from PCH. Much of the time the parking lot is mostly empty.

- Plan indicates reduced service yard.

Please see the attached Master Plan Compromise 11 with no reduction to Maintenance Yard area.

- Plan indicates an 85' driveway along Coast Highway between NBCC and the Nursery. City may have some issues.

Please see Master Plan Compromise 11, which eliminates the 85' driveway and is now identical to IBC's Preliminary Site Plan.

- Orientation of the Clubhouse has changed.

The Golf Clubhouse in Compromise 11 is now in the identical location as IBC's Preliminary Site Plan.

On a related point since I have not heard back from you regarding development of the cohesive, comprehensive Landscape Plan, Master Plan Lighting and Sign Plan which I assume we are in agreement on doing.

Sincerely yours,

Leland Stearns

ec: Michael Toerge, City of Newport Beach, Planning Commissioner
 Bradley Hillgren, City of Newport Beach, Planning Commissioner
 Robert Hawkins, City of Newport Beach, Planning Commissioner
 Fred Ameri, City of Newport Beach, Planning Commissioner
 Kory Kramer, City of Newport Beach, Planning Commissioner
 Kim Brandt, City of Newport Beach, Community Development Director
 Jim Campbell, City of Newport Beach, Principal Planner
 Rosalinh Ung, City of Newport Beach, Associate Planner
 Dave Wooten, IBC, President & CEO
 Jerry Johnson, IBC, EVP & CFO
 Perry Dickey, Newport Beach Country Club, President
 Tim Paone
 Byron de Arakal
 ROH

s t e a r n s
 ARCHITECTURE



CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

November 17, 2011

Agenda Item: 3

SUBJECT: Newport Beach Country Club (PA2008-152)
1600 East Coast Highway

- Mitigated Negative Declaration No. ND2010-010
- General Plan Amendment No. GP2008-005
- Planned Community Development Plan Amendment No. PC2008-001
- Site Development Review No. SD2011-003
- Limited Term Permit No. XP2011-005
- Development Agreement No. DA2010-005

APPLICANT: Newport Beach Country Club, Inc.

PLANNER: Rosalinh M. Ung, Associate Planner
(949) 644-3208, rung@newportbeachca.gov

INTRODUCTION

On October 20, 2011, the Planning Commission conducted a public hearing on the application submitted by the Newport Beach Country Club, Inc. to redevelop the existing golf clubhouse and parking lot.

During the hearing, the Commission considered and generally supported the site development review application submitted by the applicant, including the changes incorporated, which addressed the Commission's previous concerns. The Commission expressed a lack of support for maintaining the frontage road to the abutting Armstrong Nursery and a desire to hide the proposed wrought iron fence along East Coast Highway behind additional landscaping.

RECOMMENDATION

1. Conduct a public hearing; and
2. Adopt Resolution No.____ (Attachment PC1) recommending to the City Council:
 - a) Adoption of Mitigated Negative Declaration No. ND2010-010, including the Mitigation Monitoring and Report Program;
 - b) Approval of General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2005-002; and
 - c) Approval of Site Development Review No. SD2011-003, Limited Term Permit No. XP2011-005, and Development Agreement No. DA2010-005.

DISCUSSION

Environmental Review – Mitigated Negative Declaration

The draft Initial Study/Mitigated Negative Declaration, responses to comments received and the Mitigation Monitoring and Reporting Program are attached to the prior reports. The public hearing process has not identified to date any additional information to suggest that the environmental record is inadequate. If the Commission concurs, it is staff's recommendation that the Commission recommend the City Council adopt the environmental document.

Planned Community Development Plan (PCDP) - Amendment

The attached draft PCDP is identical to the draft PCDP recommended for adoption with the Golf Realty Fund application, with one exception; it amends the 35,000 square-foot maximum for the golf clubhouse to 56,000 square feet (Attachment PC2). In the event that the Planning Commission proceeds with the subject application without a recommendation on the preceeding Golf Realty Fund application, staff has prepared an alternative draft PCDP that only encompasses the 133-acre golf club site including the applicant's proposed 56,000 square-foot clubhouse and golf course. The alternative draft PCDP does not include any references to development of the tennis club site as proposed by Golf Realty Fund. (Attachment PC3). Neither draft PCDP provides for a particular architectural style for any development nor do they fix the design of the parking lot for the golf course. The final design of the parking lot would be a component of the Site Development Review application.

Site Development Review (SDR)

In response to the Commission's concern about screening the proposed wrought iron fence along East Coast Highway, the plans have been modified to include a wider landscape buffer. Specifically, the landscape berm has been relocated to be adjacent to East Coast Highway, and graduates to 4 feet in height rather than 2 ½ feet as originally proposed. The buffer between East Coast Highway and the frontage road is now 18 feet in width. The frontage road has been reduced to 15 feet in width and will be one-way, limited to east-bound traffic only. The reduction in the width of the frontage road allows for an additional landscape buffer of 10 feet between the frontage road and the parking lot. Finally, the landscaped berm has been separated from the perimeter fence. The berm will shield the frontage road from East Coast Highway, and the separation between the berm and the perimeter fence will make the fencing less prominent as viewed from East Coast Highway. The modifications are depicted in Attachment PC4.

Although this revision addresses the Commission's concerns of screening the fence, views through the landscaping to the golf course may be desirable and this plan does not eliminate the frontage road as desired by the Commission.

Given the Commission's desire to approve the site plan without the frontage road, staff has conditioned the SDR application such that preferred parking lot design eliminates the frontage road (Condition #5). However, the City cannot control the existence of the easement or require its elimination, but if the easement is proven to exist, the parking lot shall be designed in conformance with Attachment PC4, including vehicle access be limited to one-way east-bound movements.

The parking lot layout is included in the site plan; however, staff has added a condition (Condition #7) that would allow the Community Development Director the ability to approve a modified design such that the layout could resemble the Golf Realty Fund proposal. Regardless of the final orientation of the drive aisles and parking spaces, the final parking lot plan would need to provide the minimum number of spaces and ample landscaping as depicted in the proposed site plan. The approval of the final parking lot design plan by the Director would be administrative with appropriate notice to the Planning Commission and City Council.

Development Agreement

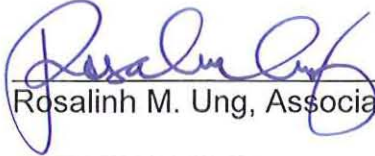
Municipal Code Section 15.45.020.A.2.c (Development Agreement Required) requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

The proposed Development Agreement (Attachment PC4) specifies the term, permitted use, density and intensity of the proposed development. The term of the agreement is for ten (10) years. Given that the site is within the Coastal Zone and that the City does not have a Certified Local Coastal Program, approval of the Development Agreement by the Coastal Commission is necessary prior to the agreement being executed and recorded. The development agreement would provide the vested right to proceed with the project as ultimately approved by the City and Coastal Commission.

The draft development agreement requires the payment of a "Public Benefit Fee" in the sum of ten dollars (\$10) per square-foot of construction for the proposed golf clubhouse (a maximum of \$560,000). This fee would be subject to Consumer Price Index adjustments.

The City Attorney's Office indicates that the draft agreement is consistent with applicable provisions of State law governing DAs.

Prepared by:



Rosalinh M. Ung, Associate Planner

Submitted by:



James Campbell, Principal Planner

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Draft Planned Community Development Plan Amendment
- PC 3 Alternative Draft Planned Community Development Plan
- PC 4 Revision to Landscape Frontage
- PC 5 Draft Development Agreement

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Attachment No. PC 1

Draft Resolution

RESOLUTION NO. ____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING ADOPTION OF A MITIGATED NEGATIVE DECLARATION NO. ND2010-010 AND APPROVAL OF GENERAL PLAN AMENDMENT NO. GPA2008-005, PLANNED COMMUNITY DEVELOPMENT PLAN ADOPTION NO PC2008-001, SITE DEVELOPMENT REVIEW NO. SD2011-003, LIMITED TERM PERMIT NO. XP2011-005, AND DEVELOPMENT AGREEMENT NO. DA2010-005 FOR THE NEWPORT BEACH COUNTRY CLUB PROPERTY LOCATED AT 1600 EAST COAST HIGHWAY (PA2008-152)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Newport Beach Country Club, Inc., with respect to property located at 1600 East Coast Highway, and legally described as Parcels 1 and 3 of Parcel Map No. 79-704 and a Portion of Back Bay Drive as Shown on Parcel Map No. 79-704, requesting an approval to redevelop the existing golf clubhouse of the Newport Beach Country Club. The following approvals are requested or required in order to implement the project as proposed:
 - a. A General Plan Amendment to increase the allowable development limit in Anomaly No. 74 in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element by 21,000 gross square feet, from 35,000 to 56,000 gross square feet.
 - b. A Planned Community Development Plan adoption to provide development standards and design guidelines for the golf course and its ancillary uses, pursuant to Chapter 20.35 of the Municipal Code.
 - c. A Site Development Review to allow the construction of 54,819 square-foot golf clubhouse with the associate parking lot and maintenance facility, pursuant to the Section 4.3 of the Newport Beach Country Planned Community Development Plan.
 - d. A Limited Term Permit (Temporary Structure and Uses) for the temporary use/structure during the clubhouse reconstruction, pursuant to Section 20.60.015 of the Municipal Code.
 - e. A Development Agreement pursuant to Section 15.45.020.A.2.c of the Municipal Code which requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

2. The application was deemed complete on October 23, 2008; and pursuant to Ordinance No. 2010-21, the application is being considered and evaluated pursuant to the Zoning Code in effect prior to November 25, 2010.
3. The subject property is located within the Newport Country Club Planned Community (PC-47) Zoning District and the General Plan Land Use Element category of Parks and Recreation (PR).
4. The subject property is located within the coastal zone and has the Coastal Land Use Plan category Parks and Recreation (PR).
5. Public hearings were held on August 4, 2011, October 20, 2011, and November 17, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on October 7, 2010, and ending on November 8, 2010. The contents of the environmental document and comments on the document were considered by the Planning Commission in its review of the proposed project.
3. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.
4. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

1. The proposed project is consistent with the General Plan and Coastal Land Use Plan as follows:
 - a. The project site is located within the Statistical Area L1 of the General Plan Land Use Element. The Land Use Element designates the subject property Parks and Recreation (PR), which is intended for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The proposed redevelopment of the golf clubhouse consistent with the proposed alternative planned community development plan thereby would be consistent with this designation.
 - b. The General Plan limits total development on the subject site to 35,000 square feet per Anomaly No. 74. A general plan amendment to increase the maximum floor area to 56,000 square feet, a net increase of 21,000 square feet, is proposed in order to accommodate the proposed new golf clubhouse.
 - c. General Plan Policy LU 3.2 encourages the enhancement of existing neighborhoods, districts, and corridors, by allowing for re-use and infill with uses that are complementary in type, form, scale, and character. The policy states that changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.

The proposed General Plan Amendment for increased intensity is consistent with General Plan Policy LU 3.2 as follows:

1. The increased intensity does not impact Newport Beach's share of projected regional population growth. The existing golf clubhouse was constructed in the 1950's and no longer meets the needs of its membership or the Newport Beach Community. National and international golf tournaments are held at the Newport Beach Country Club as well as numerous local and regional charitable events which distinguish Newport Beach from other destinations in the southern California area. The reconstruction and modernization of the clubhouse will enable the Newport Beach Country Club to retain its reputation as a world class sporting venue.

2. The increase in intensity would enhance the values that distinguish Newport Beach as a special place to live for its residents. The proposed reconstruction represents a significant investment to upgrade an aging facility with modern amenities for Newport Beach Country Club members and the greater Newport Beach community during special events, while retaining both active and passive open space in an urban environment.
- d. General Plan Policy LU 5.6.1 requires that buildings and properties be designed to ensure compatibility within and as interfaces between neighborhoods, districts, and corridors. An alternative planned community district development plan has been prepared that contains development regulations ensuring compatibility with the surrounding uses. The project, therefore, is consistent with this policy.
- e. General Plan Policy 6.14.4 reinforce the original design concept for Newport Center by concentrating the greatest building mass and height in the northeasterly section along San Joaquin Hill Roads, where the natural topography is highest and progressively scaling down building mass and height to follow the lower elevations toward the southwesterly edge along Coast Highway.

The proposed General Plan Amendment for increased intensity is consistent with General Plan Policy LU 6.14.4 in that the proposed reconstruction of the golf clubhouse will allow for the expansion of an existing use allowed by the Land Use Element of the General Plan. The proposed alternative planned community district development plan adheres to the original design concept for Newport Center by not creating a building that is exceedingly high in the lower area along Coast Highway. The golf clubhouse building height will not exceed the nonresidential, nonshoreline 32/50-foot height limit area.

- f. The Coastal Land Use Plan designates the subject site as Parks and Recreation (PR) and is consistent with the General Plan Land Use designation. The adoption of the amendment to the planned community development plan will ensure building design and siting regulations will protect coastal resources, including protection of views, and public access through height, setback, floor area, lot coverage, building bulk, and improved pedestrian access in accordance with Policy 2.2.2-4. The proposed golf clubhouse of the Newport Beach Country Club will continue to provide visitor-serving and recreational facilities as required by Policy 2.3.2-2. The proposed redevelopment of the project site is therefore consistent with the Coastal Land Use designation.
- g. The subject property has a zoning designation of Planned Community (PC-47). This PC zoning designation was adopted in 1997 by Ordinance 97-10, as a part of the City-wide amendment to the districting maps, in order to be consistent with the 1988 General Plan Land Use Element and Zoning Code. The City later assigned the PC with a number of 47 for tracking purposes. A Planned

Community Development Plan (development regulations), was not adopted when the PC District zoning designation was assigned to the subject property.

- h. A planned community development plan (PCDP) is proposed for the Golf Club site and not to include the entire area within the area designated of PC 47. The PCDP contains necessary development regulations to accommodate the applicant's project.
2. Charter Section 423 Analysis – Charter Section 423 requires that all proposed General Plan Amendments be reviewed to determine if the square footage (for non-residential projects), peak hour vehicle trip, or dwelling units thresholds would be exceeded as the means to determine whether a vote by the electorate would be required to approve the General Plan Amendment.

The subject property is located within Statistical Area L1 of the General Plan Land Use Element. There are no prior general plan amendments to this statistical area since 2006 when the General Plan Update was adopted. The proposed General Plan amendment would be the first amendment for this statistical area and would result in an increase of 21,000 gross square feet (GSF) of non-residential floor area. No increase in residential development is being proposed. There would be no increase to A.M. nor P.M. peak hour trip as the overall size of the golf course remains the same and the proposed clubhouse does not have separate trip rates and ITE predicts traffic based upon the number of acres and not floor area. Pursuant to Council Policy A-18, voter approval is not required as the proposed General Plan Amendment represents an increase of 21,000 square feet, no increase in residential development, and no increase to A.M. nor P.M. peak hour trip. The project, therefore, does not exceed Charter Section 423 thresholds as to require a vote of the electorate.

3. Site Development Review - The project consists of 54,819 square foot clubhouse with associate parking lot and maintenance facility. Pursuant to Section 4.3 of the PCDP, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The Site Development Plan shall be in compliance with all other provisions of the PCDP (Newport Beach Country Club Planned Community Development Plan).*

Facts in Support of Finding:

- A-1. The PCDP provides a requirement that a site development review process be completed for construction of any new major building structure located on the subject site and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permits. A site development review application has been submitted for the construction of the golf clubhouse and meets provisions stated in the PCDP in that and thereby meets the intent specified in Section 20.52.080 (Site Development Reviews) of the Municipal Code.

- A-2. The proposed site development plan is in compliance with all provisions of the PCDP as the proposed development complies with all development criteria specified in the PCDP.

Finding:

- B. *The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.*

Facts in Support of Finding:

- B-1. The golf course is an existing use that has been in place since the 1950's. The reconstruction and modernization of the golf clubhouse will enable the golf course to retain its reputation as a world class sporting venue. The reconstruction represents a significant upgrade to an aging facility with modern amenities for its members and also to the greater Newport Beach community during special events, while retaining both active and passive open space in an urban environment.
- B-2. The proposed placement of the golf clubhouse and support uses will be within the same general location as the existing buildings. An open, landscaped area will remain between the porte-cochere and the adjacent tennis club facility. The elevation of the proposed development located on the adjacent Tennis Club site is higher than the golf club property, and combined with the significant separation from the proposed clubhouse, an adequate visual buffer between the two properties will be provided. The golf course has been designed and the buildings have been sited to compliment topography of the area and the variety of uses found within the Newport Center/Fashion Island area. The development will not constitute a hazard to the public convenience, health, interest, safety or general welfare for persons residing or working in the neighborhood of the facility.

Finding:

- C. *The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.*

Facts in Support of Finding:

- C-1. The proposed clubhouse will be 46 feet in height, within the maximum permitted building height of 50 feet. The proposed detailed architectural plans illustrate the clubhouse's building height, mass and design and demonstrate the project's compatibility with existing development and the City's adopted policies and standards. The edge of the porte-cochere will be set back approximately 165 feet from the proposed adjacent development. A proposed wrought iron fence along East Coast Highway and significant landscaping of the frontage and parking lot promote

compatibility and will allow unobstructed views of the golf course, thereby providing an aesthetic benefit view along Coast Highway. The entry drive has been enhanced with the addition of a landscaped median, sidewalks on both sides and a landscape buffer between the sidewalks and the road. The entry design with enhanced medians and mature trees presents a more upscale aesthetic appearance and compatible with the community.

Finding:

- D. *Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.*

Facts in Support of Finding:

- D-1. As proposed, entry driveway will be widened to align with the street portion south of East Coast Highway, thereby providing improved access to the site. Pedestrian access along entry driveway will be enhanced with sidewalks on both sides of the road. The porte-cochere entrance to the clubhouse is designed to provide enhanced circulation for bag drops and vehicular access to the parking area. A separate banquet drop-off and pick-up areas are proposed to improve circulation throughout the parking lot. The design of the parking area features will greatly improve circulation and provide adequate parking to accommodate the needs of members and guests. The proposed site plan also provides access to the adjacent Tennis Club site.
- D-2. The application includes two site plan alternatives to address the existing frontage road easement that presently provides access from the signalized intersection to the abutting Armstrong Nursery property. Should the frontage road remain, the existing entrance to the frontage road from Irvine Terrace will be moved approximately 60 feet farther away from Coast Highway to provide safer ingress and egress. Should the easement be terminated the alternate plan eliminates the frontage road easement thereby allowing increased landscaping along Coast Highway. In any case, road and access improvements provide additional safety to members and guests of the golf club.
4. Development Agreement – Municipal Code Section 15.45.020.A.2.c (Development Agreement Required) requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). The development agreement includes all the mandatory elements for consideration and the public benefits are appropriate benefits to support conveying the vested development rights.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach does hereby find, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis. The Planning Commission hereby recommends that the City Council adopt Mitigated Negative Declaration, including the Mitigation Monitoring and Reporting Program attached as Exhibit "A". The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
2. The Planning Commission of the City of Newport Beach finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.
3. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve General Plan Amendment No. GP2008-005 to increase the maximum allowable development limit in Anomaly No. 74 in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element by 21,000 gross square feet (from 35,000 square feet to 56,000 square feet), as depicted in Exhibit "B" attached hereto and incorporated by reference.
4. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council amend Planned Community Development Plan No. PD2008-001 to increase the size of the golf clubhouse from 35,000 to 56,000 square feet and to provide zoning development standards and design guidelines for the Golf Course and its ancillary uses, as depicted in Exhibit "C" attached hereto and incorporated by reference.
5. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Limited Term Permit No. 2011-005 and Site Development Review No. SD2011-003, subject to the conditions set forth in Exhibit "D" attached hereto and incorporated by reference.
6. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Development Agreement No. 2010-005 as attached as Exhibit "E".

PASSED, APPROVED AND ADOPTED THIS 17TH OF NOVEMBER, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Charles Unsworth, Chairman

BY: _____
Bradley Hilgren, Secretary

EXHIBIT "A"
MITIGATION MONITORING AND REPORTING PROGRAM

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
Aesthetics				
SC-1	Prior to the issuance of building permits, the applicant shall prepare a photometric study in conjunction with a final lighting plan for approval by the Planning Division. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Planning Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Planning Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.	Approval of photometric study	Prior to issuance of building permit	Planning Division
Agricultural and Forest Resources				
No significant impacts are anticipated and no mitigation measures are required.				
Air Quality				
SC-2	Adherence to SCAQMD Rule 402, which prohibits air contaminants or other materials that cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property to be emitted within the SoCAB.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-3	Adherence to SCAQMD Rule 403, which sets requirements for dust control associated with grading and construction activities.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-4	Adherence to SCAQMD Rules 431.1 and 431.2, which require the use of low sulfur fuel for stationary construction equipment.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-5	Adherence to SCAQMD Rule 1108, which sets limitations on ROG content in asphalt.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-6	Adherence to SCAQMD Rule 1113, which sets limitations on ROG content in architectural coatings.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-7	Adherence to Title 24 energy-efficient design requirements as well as the provision of window glazing, wall insulation, and efficient ventilation methods in accordance with the requirements of the Uniform Building Code.	Submit evidence of compliance during building plan check process	Prior to issuance of building permits	Building Division
Biological Resources				
No significant impacts to biological resources are anticipated and no mitigation measures are required.				
Cultural Resources				
SC-8	A qualified archaeological/paleontological monitor shall be retained by the project applicant	Submit proof of qualified	Prior to issuance of grading permit	Planning Division

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	who will be available during the grading and landform alteration phase and shall be contacted if cultural resources are encountered. In the event that cultural resources and/or fossils are encountered during construction activities, ground-disturbing excavations in the vicinity of the discovery shall be redirected or halted by the monitor until the find has been salvaged. The area surrounding any cultural materials or fossils encountered during grading shall also be investigated to determine the extent of the site. Any artifacts and/or fossils discovered during project construction shall be prepared to a point of identification and stabilized for long-term storage. Any discovery, along with supporting documentation and an itemized catalogue, shall be accessioned into the collections of a suitable repository. Curation costs to accession any collections shall be the responsibility of the project applicant.	archaeological/paleontological monitor		
MM-1	The City shall provide an opportunity for a Native American representative to monitor excavation activities. The representative shall be determined by the City based on input from concerned Native American tribes (i.e., Gabrielino, Juaneño, and Tongvas).	Submit proof of Native American observer	Prior to issuance of grading permit	Planning Division
Geology and Soils				
MM-3	Prior to issuance of the grading permit, an erosion control plan shall be submitted to and approved by the City's Chief Building Official.	Approval of erosion control plan	Prior to issuance of grading permit	Building Division
MM-4	Prior to issuance of a grading permit, the applicant shall submit a soils engineering report and final geotechnical report to the City's Chief Building Official for approval. The project shall be designed to incorporate the recommendations included in those reports that address site grading, site clearing, compaction, bearing capacity and settlement, lateral pressures, footing design, seismic design, slabs on grade, retaining wall design, subdrain design, concrete, surface drainage, landscape maintenance, etc.	Submittal of soils engineering report and final geotechnical report	Prior to issuance of grading permit	Building Division
Greenhouse Gas Emissions				
SC-9	All new buildings shall meet Title 24 requirements.	Submit evidence of compliance during building plan check process	Prior to issuance of building permit	Building Division
SC-10	Water conservation design features shall be incorporated into building and landscape designs.	Submit evidence of compliance	Prior to issuance of building permit	Planning Division and Public Works Department
Hazards and Hazardous Materials				
SC-11	Prior to any disturbance of the construction materials within the Golf Clubhouse and/or the Tennis Clubhouse, a comprehensive asbestos containing materials (ACM) and lead based paint (LBP) survey shall be conducted. Any repairs,	Submit ACM and LBP survey and site inspection	Prior to issuance of demolition permit for buildings	Building Division

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	renovations, removal or demolition activities that will impact the ACM and/or LBP or inaccessible ACM shall be performed by a licensed asbestos contractor. Inaccessible suspect ACM shall be tested prior to demolition or renovation. Proper safety procedures for the handling of suspect ACM and LBP shall be followed in accordance with federal, state and local regulatory requirements federal and California Occupation Safety and Health Administration (OSHA), and Air Quality Management District (AQMD) Rule 1403, which sets forth specific procedures and requirements related to demolition activities involving asbestos containing materials and SCAQMD Regulation X - National Emission Standards For Hazardous Air Pollutants, Subpart M - National Emission Standards For Asbestos, which include demolition activities involving asbestos.			
SC-12	During demolition, grading, and excavation, workers shall comply with the requirements of Title 8 of the California Code of Regulations Section 1532.1, which provides for exposure limits, exposure monitoring, respiratory protection, and good working practice by workers exposed to lead. Lead-contaminated debris and other wastes shall be managed and disposed of in accordance with the applicable provision of the California Health and Safety Code.	Periodic monitoring during demolition and site inspection	During demolition, grading and excavation	Building Division
Hydrology and Water Quality				
The applicant has prepared a Conceptual WQMP that identifies a range of BMPs and related water quality features to ensure that water quality impacts associated with the proposed project are reduced to an acceptable level. In addition, implementation of BMPs that will be included in the SWPPP will ensure that construction impacts are minimized. Similarly, BMPs will also be refined and incorporated into the project design to avoid post-construction impacts to water quality. Therefore, no significant impacts are anticipated and no mitigation measures are required.				
Land Use and Planning				
No significant impacts are anticipated and no mitigation measures are required.				
Mineral Resources				
No significant impacts are anticipated and no mitigation measures are required.				
Noise				
MM-5	During construction operations, the applicant or contractor shall provide evidence to the City that all construction equipment, stationary and mobile is equipped with properly operating and maintained muffling devices.	Submit construction schedule and site inspection	During construction operations	Building Division
MM-6	Prior to issuance of a grading permit, the applicant or contractor shall prepare a Construction Management Plan (CMP), which confirms that potential project-related and cumulative construction noise levels are minimized and do not exceed levels prescribed in the City's Noise Ordinance. The CMP shall include a requirement that the construction	Submit construction management plan	Prior to issuance of grading permit	Building Division

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	contractor must notify the nearby residents of the construction schedule for the proposed project, and shall keep them informed on any changes to the schedule. The notification shall also identify the name and phone number of a contact person in case of complaints. The contact person shall take all reasonable steps to resolve the complaint.			
MM-7	Prior to occupancy, heating, venting, and air conditioning (HVAC) equipment in or adjacent to residential areas shall be shown by computation, based on the sound rating of the proposed equipment, not to exceed an A-weighted sound pressure level of fifty (50) dBA or not to exceed an A-weighted sound pressure level of fifty-five (55) dBA and be installed with a timing device that will deactivate the equipment during the hours of 10:00 p.m. to 7:00 a.m.	Submit evidence of HVAC equipment sound rating (adjacent to residential areas) during building plan check process	Prior to issuance of building permit	Building Division
Population and Housing				
No significant impacts are anticipated and no mitigation measures are required.				
Public Services				
No significant impacts are anticipated and no mitigation measures are required.				
Recreation				
No significant impacts are anticipated and no mitigation measures are required.				
Traffic and Circulation				
MM-8	<p>Prior to issuance of grading permits for the proposed project by the long-term lease holder and/or the redevelopment of the adjacent tennis complex as proposed by the underlying property owner, whichever occurs first, the circulation conflict at Irvine Terrace/Country Club Drive shall be resolved by one of the following methods.</p> <p>a. The proposed project shall be modified to shift Country Club Drive approximately 30 feet to the south to accommodate the tennis complex redevelopment plan; or</p> <p>b. The bungalow units proposed adjacent to the site on the north side of Country Club Drive proposed by the property owner as part of application PA 2005-140 shall be modified, reoriented, reduced, or shifted to the north to avoid the road in its current alignment; or</p> <p>c. Some combination or modification of both plans shall be devised that would reconcile the discrepancy between the two plans.</p>	Submittal of modified circulation plan	Prior to issuance of grading permit	Planning Division and Public Works Department
MM-9	Prior to the issuance of a grading permit, the existing access easement shall be revised so as to relocate its intersection with Irvine Terrace 85 feet northerly of where it currently exists. The new location shall be approved by the City	Submittal of revised access easement	Prior to issuance of grading permit	Planning Division and Public Works Department

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	Traffic Engineer prior to recordation.			
MM-10	<p>Prior to the issuance of a grading permit, the applicant or Contractor shall submit a Construction Staging, Parking and Traffic Control Plan for approval by the Public Works Department, which shall address issues pertaining to potential traffic conflicts during peak traffic periods, potential displacement of on-street parking, and safety.</p> <ul style="list-style-type: none"> This plan shall identify the proposed construction staging area(s), construction crew parking area(s), estimated number and types of vehicles that will occur during that phase, the proposed arrival/departure routes and operational safeguards (e.g. flagmen, barricades, etc.) and hourly restrictions, if necessary, to avoid traffic conflicts during peak traffic periods and ensure safety. If necessary, the Construction Staging, Parking and Traffic Control Plan shall provide for an off-site parking lot for construction crews which will be shuttled to and from the project site at the beginning and end of each day until such time that the project site can accommodate off-street construction vehicle parking. The plan shall identify all construction traffic routes, which shall avoid narrow streets unless there is no alternative, and the plan shall not include any streets where some form of construction is underway within or adjacent to the street that would impact the efficacy of the proposed route. Dirt hauling shall not be scheduled during weekday peak hour traffic periods. The approved Construction Staging, Parking and Traffic Control Plan shall be implemented throughout each major construction phase. 	Approval of construction staging, parking and traffic control plan	Prior to commencement of each major phase of construction	Planning Division and Public Works Department
Utilities and Service Systems				
No significant impacts are anticipated and no mitigation measures are required.				

EXHIBIT "B"

**REVISED TABLE LU2
ANOMALY LOCATIONS**

Table LU2 Anomaly Locations					
Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
74	L1	PR	35,000 56,000		
75	L1	PF			City Hall, and the administrative offices of the City of Newport Beach, and related parking, pursuant to Section 425 of the City Charter.
76	H1	CO-G		0.5 FAR	1.0 FAR permitted, provided all four legal lots are consolidated into one parcel to provide unified site design
77	H4	CV	240,000	157 Hotel Rooms (included in total square footage)	
78	B5	CM	139,840		
79	H4	CG		0.3/0.5	Development limit of 19,905 sq.ft. permitted, provided all six legal lots are consolidated into one parcel to provide unified site design

EXHIBIT "C"

**NEWPORT BEACH COUNTRY CLUB
PLANNED COMMUNITY DEVELOPMENT PLAN**

EXHIBIT "D"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

COMMUNITY DEVELOPMENT DEPARTMENT

1. *Development shall be in substantial conformance with Site Development Review No. SD2011-003 and Limited Term Permit No. XP2011-005, stamped and dated with the date of this approval (Except as modified by applicable conditions of approval.)*
2. *Site Development Review No. SD2011-003 is approved for the golf course and the construction of an approximately 54,820 square-foot golf clubhouse with the associate parking lot and maintenance facility.*
3. *Limited Term Permit No. XP2011-005 is approved for the use of three (3) temporary modular buildings to accommodate on-going golf course/club operation during the 36-month construction of new golf clubhouse. The modular buildings shall be located on the golf course, shall not interfere with the construction activities or parking, and shall be removed from the golf course site upon completion/occupancy of the new clubhouse.*
4. *Site Development Review No. SD2011-003 and Limited Term Permit No. XP2011-005 shall expire unless exercised within the term of Development Agreement No. 2010-005, unless an extension is otherwise granted.*
5. *The preferred parking lot design eliminates the frontage road that provides access from the entry driveway to the Armstrong Nursery property to the west of the project site shall be eliminated as shown in Exhibit A2C dated September 19, 2011. In the event that the applicant must provide frontage road due to private easement obligations, the parking lot shall be designed in conformance with Attachment PC4 of the November 17, 2011, Planning Commission Staff Report, including vehicle access be limited to one-way east-bound movements.*
6. *Any substantial change to the approved plans, shall require an amendment to Site Development Review No. SD2011-003 and/or Limited Term Permit No. XP2011-005 or the processing of new permits.*
7. *A minimum of 334 parking spaces shall be provided and maintained for the Golf Course and its clubhouse. The design of the parking lot may be modified provided it meets applicable safety and design regulations or standards as determined by the City Traffic Engineer. The final parking lot layout including the orientation of the drive aisles and parking spaces shall be subject to the review and approval by the Community Development Director, with appropriate notification to the Planning Commission and City Council.*

8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. Should this business or property be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
11. This Site Development Review and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/ or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
12. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
13. All landscape materials and landscaped areas shall be installed and maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
14. Prior to the issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
15. Reclaimed water shall be used for all landscape areas to the maximum extent practicable recognizing that potable water is necessary in some areas of the golf course. Water for landscaped areas shall be used in accordance with the agreement between the Orange County Water District, the City of Newport Beach, and the Newport Beach Country Club, dated December 18, 1996. Potable water may be used

consistent with approvals from the City of Newport Beach, at mutually agreeable times.

16. Water leaving the project site due to over-irrigation of landscape shall be minimized to maximum extent feasible.
17. Watering of landscape areas shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.).
18. Water shall not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
19. Prior to issuance of any permit for development, approval from the California Coastal Commission shall be required.
20. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

21. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not permitted outside of these hours or on Sundays or Holidays.
22. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Community Development Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
23. Storage outside of buildings or within the parking lot of the property shall be prohibited, with the exception of the required trash container enclosure. Outdoor storage of golf course-related equipment and supplies shall be permitted within the screened maintenance yard.
24. A Special Event Permit is required for any event or promotional activity outside the

normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

25. All proposed signs shall be in conformance with the provision of the Newport Beach Country Club Planned Community Development Plan and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.
26. The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.
27. Lighting shall be in compliance with applicable standards of the Newport Beach Country Club Planned Community Development Plan and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.
28. The site shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Zoning Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
29. Prior to the issuance of building permits the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
30. Prior to issuance of the certificate of occupancy or final of building permits the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
31. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code and with pollution control units to filter and control odors.
32. *The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
33. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction.*
34. *Construction equipment and materials shall be properly stored on the site when not in use.*

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35. Prior to the issuance of any building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
36. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Newport Beach Country Club development including, but not limited to General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2008-001, Development Agreement No. DA2010-005, Limited Term Permit No. XP2011-005, Mitigated Negative Declaration No. ND2010-010, and Site Development Review No. SD2011-003. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
37. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
38. Prior to the issuance of grading permits, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
39. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
40. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with five percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. All construction roads internal to the construction site that have a traffic volume of more than 50 daily trips by construction equipment, or 150 total daily trips for all vehicles, shall be surfaced with base material or decomposed granite, or shall be paved.
- l. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads.
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.

Unpaved Staging Areas or Roads

- n. Water or non-toxic soil stabilizers shall be applied, according to manufacturers' specifications, as needed to reduce off-site transport of fugitive dust from all unpaved staging areas and unpaved road surfaces.

FIRE DEPARTMENT

- 41. Automatic fire sprinklers shall be required for all new construction that exceeds 5,000 square feet in size, is located more than 150 feet from an approved fire access road, and/or based on occupancy classification. The sprinkler system shall be monitored by a UL certified alarm service company.
- 42. All buildings may require a fire alarm system depending upon occupancy classification.
- 43. Fire hydrant(s) shall be provided every 300 feet along fire access road. The number and location of the fire hydrant shall be determined by the Fire Department.
- 44. Any automatic gates shall require a "Knox" key switch and an approved remote opening device. Minimum width of access shall be 14 feet.
- 45. All elevators shall be gurney accommodating.
- 46. The use or storage of portable propane heaters is prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.

MUNICIPAL OPERATIONS DEPARTMENT

- 47. The applicant shall conduct a cross-connection shut down test annually with the Orange County Health Department, City and State Health Department due to recycled water on the premises. Documentation of successful tests shall be submitted to the Municipal Operation Department within 30 days of the test.

PUBLIC WORKS DEPARTMENT

- 48. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
- 49. Traffic signal modifications may be needed to the existing traffic signal at the intersection of Irvine Terrace/East Coast Highway due to the modified main entry, including but not limited to new traffic signal poles, loop detection, conduit, striping, etc. The applicant is responsible for costs associated with the design and installation of all traffic signal modification improvements. The limits and extent of work will be determined based on the final approved Irvine Terrace/Coast Highway entry configuration.

50. All on-site drainage, sanitary sewer, water, and electrical systems shall be privately owned, operated, and maintained.
51. The parking lot and vehicle circulation system shall be subject to further review by the City Traffic Engineer. Parking lot layout shall comply with City Standard STD-805-L-A and STD-805-L-B. Main driveways, service access, and driveways to parking areas shall be controlled by appropriate signage (i.e. stop signs).
52. All improvements shall be constructed as required by Ordinance and the Public Works Department.
53. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing STD-110-L. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.
54. An encroachment permit is required for all construction activities within the public right-of-way.
55. An encroachment agreement is required for all private encroachments in the public right-of-way. All private encroachments shall comply with City Council Policy L-6, Private Encroachments in the Public Right-of-Way.
56. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
57. ADA compliant curb ramps shall be installed at all intersections on Irvine Terrace, Coast Highway and within the interior parking area.
58. The domestic water supply shall have a separate water meter and back flow preventer. The domestic water proposed off of the water main on Irvine Terrace shall have a water meter and back flow preventer. Identify the size of the proposed domestic water line.

MITIGATION MEASURES

59. The applicant shall comply with all mitigation measures and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the adopted Mitigated Negative Declaration (Exhibit "A") for the project.

EXHIBIT "E"
DEVELOPMENT AGREEMENT

Attachment No. PC 2

Draft Planned Community Development
Plan Amendment

Newport Beach Country Club
Planned Community Development Plan

Date: November 17, 2011

Ordinance No. ____
Adopted _____

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 145 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private Golf Club, Tennis Club, 27 short-term rental units called the Bungalows with a spa/fitness area, and 5 semi-custom single-unit residential dwellings called the Villas.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical

engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. Screening of the Villas from Tennis Courts

Adequate buffering between the Villas and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

21. Screening of the Villas' Pool/Spa Equipment

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

22. Special Events

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. Trash Container Storage for Residential Dwellings-

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. Tennis Club Site Phasing Plan-

The phasing plan for the tennis club site which consists of the tennis club, villas and bungalows shall be subject to a site development review process.

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be ~~35,000~~56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms

- Golf Cart Parking Storage and Washing Area
- Separate Snack Bar
- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 Tennis Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

A. **The Tennis Courts**

1. Number of courts

The maximum allowable tennis courts shall be seven lighted tennis courts (six lighted championship courts and one lighted stadium-center court).

B. Tennis Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

2. Building Height

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet, and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Tennis Clubhouse and Courts shall be a minimum of 28 parking spaces.

3.3. The Villas

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the villas.

1. Number of Units

The maximum allowable number of single-family residential units shall be five (5).

2. Development Standards

The following development standards shall apply to the Villas:

The Villas Development Standards Table

Villa Designation	Villa A TTM Lot #1	Villa B TTM Lot #2	Villa C TTM Lot #3	Villa D TTM Lot #4	Villa E TTM Lot #5
Lot Size	5,000 square feet minimum				
Lot Coverage (Maximum)	70%	65%	55%	40%	55%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations				
Building Side Yard Setbacks	3 feet minimum				
Building Front and Rear Yard Setbacks	5 feet minimum				
Enclosed Parking Space for Each Unit	2	2	3	3	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed				

3.4. The Bungalows

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

1. Number of Units

The maximum allowable number of the Bungalows shall be 27 short-term guest rental units to be built in a clustered setting of single and two-story buildings.

2. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Concierge office and guest meeting facility
- Swimming pool and Jacuzzi
- Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items

3. Building Area

The maximum allowable gross floor area for the bungalows shall be 28,300 square feet with a 2,200 square foot concierge & guest center and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the bungalows shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The setback requirement shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the bungalows shall be a minimum of 34 parking spaces located in proximity to the use.

3.5 Signs

A. Sign Allowance

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing

distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, , tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

Attachment No. PC 3

Alternative draft Planned
Community Development Plan
(Applicable to only the 133-acre
Golf Club Site)

Newport Beach Country Club
Planned Community Development Plan

Date: November 17, 2011

Ordinance No. ____
Adopted _____

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1.0 INTRODUCTION AND PURPOSE

The Newport Beach Country Club Planned Community District (PCD) is composed of the Golf Club facilities, totaling approximately 133 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project for the private Golf Club.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Alcoholic Beverage Consumption

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

2. Amplified Music

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

3. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

4. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

5. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

6. Exterior Storage Areas

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six foot plastered block wall.

7. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

8. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

9. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

10. Height and Grade

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determined the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director.

11. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, and walkways to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

12. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical

engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

13. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

14. Loading Areas for Non-Residential Uses

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

15. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

16. Property Owner Approval

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

17. Outdoor Paging

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees.

18. Sewage Disposal

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

19. Screening of Mechanical Equipments

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

20. RESERVED

21. RESERVED

22. Special Events

Temporary special community events, such as PGA Senior Classic golf tournaments, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

23. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

24. RESERVED

25. Trash Enclosures for Non-Residential Uses

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

26. RESERVED

27. Water Service

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

B. Golf Clubhouse and Ancillary Uses

1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be 56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greenskeeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area
- Separate Snack Bar

- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

3.2 RESERVED

3.3. RESERVED

3.4. RESERVED

3.5 Signs

A. Sign Allowance

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's main entrance (Country Club Drive, Irvine Terrace and/or Coast Highway). Total maximum signage

area shall not exceed one hundred fifty-five (155) square feet and shall not exceed seven (7) feet in height.

2. **RESERVED**

3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.

4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. **RESERVED**

B. Sign Standards

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.

2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.

3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.

4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.

5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.

6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.

7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

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4.0 SITE DEVELOPMENT REVIEW

4.1 Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

4.2 Application

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, cart barn, maintenance building, golf course's ancillary structures (i.e. free-standing restroom facilities, snack bar, and starter shack), tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

4.3. Findings

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

4.4. Contents

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

4.5 Public Hearing –Required Notice

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in

not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

4.6 Expiration and Revocation Site Development Review Approvals

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

4.7. Fees

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

Attachment No. PC 4
Revision to Landscape Frontage

Attachment No. PC 5
Draft Development Agreement



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

DATE: October 20, 2011

TO: Community Development Department

FROM: Leonie Mulvihill, Assistant City Attorney

A handwritten signature in blue ink, appearing to be "LM", is written over the name "Leonie Mulvihill".

MATTER: IBC Country Club: Development Agreement
No.: A11-00526

SUBJECT: Planning Commission Agenda Item No. 3 – October 20, 2011

Attached, please find the proposed Development Agreement that has been approved by the applicant.

[A11-00526]- CDD from LM 10.20.11 re Agenda Item No. 3.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

THE NEWPORT BEACH COUNTRY CLUB, INC.

(Concerning 1600 East Coast Highway)

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DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the ___ day of _____, 201__ (the "Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City"), and Newport Beach Country Club, Incorporated ("NBCC"). City and NBCC are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. The Newport Beach Country Club, Incorporated (also referred to herein as NBCC) is the owner and operator of The Newport Beach Country Club subject to a lease with O'Hill Properties, a California limited partnership, Allan Fainbarg and Sara Fainbarg as Trustees of the Fainbarg Family Trust dated April 19, 1982 and Mesa Shopping Center-East, a California General Partnership (the "Lease"), the fee owners of the 132-acre parcel of real property (Property) that is described in the legal description attached hereto as Exhibit A and depicted on the Overall Site Plan attached hereto as Exhibit B1 and Overall Site Plan Alternative Exhibit B2.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 4 of this Agreement, NBCC has agreed to provide a Public Benefit Fee as consideration for this Agreement:

E. This Agreement is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "PR (Parks and Recreation)" the Coastal Land Use Plan's designation as "OS (Open Space)" and the Newport Beach Country Club Planned Community District (PA 2008-152) that was adopted in 1997 by Ordinance No. 97-10 and amended in 201__ by Ordinance No. ____ - ____ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and

general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration for the Newport Beach Country Club Planned Community District (PA 2008-152 by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On _____, 201_, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 201_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, NBCC, and members of the public. On _____, 201_, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and NBCC agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

"Agreement" shall mean this Zoning Implementation and Public Benefit Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Coastal Development Permit” shall mean a permit issued by the California Coastal Commission pursuant to subdivision (a) of Section 30600 of the California Coastal Act.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean the General Plan Land Use Element Amendment, the Newport Beach Planned Community District, Development Plan approved by the City Council on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

“Development Regulations” shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted,

approved, or imposed after the Effective Date that impairs or restricts NBCC's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by NBCC in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws; statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as

amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“First Building Permit” shall mean the first building permit that is issued for the project.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, excluding any amendment after the Effective Date that impairs or restricts NBCC’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by NBCC. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or NBCC or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that NBCC is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that NBCC is required to obtain to Develop the Project on and with respect to

the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

"Term" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Termination Date" and "Lot Termination Date" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City's zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 NBCC Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

NBCC and each person executing this Agreement on behalf of NBCC hereby represents and warrants to City as follows: (i) that NBCC is the lessee of the Property; (ii) if NBCC or any co-owner comprising NBCC is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if NBCC or any co-owner comprising NBCC is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising NBCC to enter into this Agreement have been taken and that NBCC has the legal authority to enter into this Agreement; (v) that NBCC's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that NBCC or any person or entity comprising NBCC has to any third party; (vi) that neither NBCC nor any co-owner comprising NBCC is the subject of any voluntary or involuntary petition; and (vii) that NBCC has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting NBCC's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Agreement Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that NBCC's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the _tenth (10th) anniversary of the Term Commencement Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; (iii) or (iv) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other NBCC obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, NBCC shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the

Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. NBCC shall pay the Public Benefit Fee at the following time(s): prior to issuance of the first building permit for the construction of the proposed golf clubhouse. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. NBCC acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and NBCC's vesting rights to be acquired hereunder, and that NBCC expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for NBCC's default, if NBCC shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

4. Development of Project.

4.1 Applicable Regulations; NBCC's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) NBCC shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest NBCC's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such

overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Development of the property includes approval of this Agreement, a General Plan Land Use Element Amendment, The Newport Beach Country Club Planned Community Development Plan, a Mitigated Negative Declaration and Site Development Plans that will allow NBCC to reconstruct the existing 23,469 square foot golf clubhouse to a maximum of 56,000 square feet with a maximum building height of 50 feet, subterranean golf cart parking and storage under the golf clubhouse, a golf course maintenance building and to provide an upgraded project entry, parking and landscaping. The project requires the approval of a Coastal Development Permit by the California Coastal Commission.

NBCC has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. NBCC represents and City acknowledges that NBCC would not make these expenditures without this Agreement, and that NBCC is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

NBCC may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, NBCC may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that NBCC shall have the vested right to Develop the Project on and with respect to the Property at the rate,

timing, and sequencing that NBCC deems appropriate within the exercise of NBCC's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts NBCC's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and NBCC shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where NBCC has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, NBCC shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to NBCC and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without NBCC's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest NBCC against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement:

(i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override NBCC's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) NBCC does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or NBCC shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and NBCC shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and NBCC agree to preserve the terms of this Agreement and the rights of NBCC as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with NBCC at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon NBCC. City also agrees to process in a prompt manner NBCC's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule, regulation, program, or official policy would result in the impairment of NBCC's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent NBCC constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of NBCC or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

5. Amendment or Cancellation of Agreement

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of NBCC.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of NBCC's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. NBCC (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 NBCC Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, NBCC is required to demonstrate good faith compliance with the terms of the Agreement. NBCC agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not NBCC has, for the period under review, complied with the terms of this Agreement. If the City Council finds that NBCC has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that NBCC has not so complied, written notice shall be sent to NBCC by first class mail of the City Council's finding of non-compliance, and NBCC shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of NBCC, NBCC must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If NBCC fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of NBCC's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by NBCC or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by NBCC.

If NBCC is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider NBCC's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If NBCC's appeal of the Notice of Default is timely and in good faith but after a public hearing of NBCC's appeal the City Council

concludes that NBCC is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of NBCC's appeal is communicated to NBCC.

8.3 City's Option to Terminate Agreement.

In the event of an alleged NBCC Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing NBCC with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if NBCC timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by NBCC. Any such judicial challenge must be brought within thirty (30) days of service on NBCC, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If NBCC alleges a City Default and alleges that the City has not cured the Default within the Cure Period, NBCC may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in NBCC's performance hereunder shall neither be a NBCC Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at NBCC's option (and provided NBCC delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both NBCC and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. NBCC and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate NBCC or City for such efforts. For the above reasons, City and NBCC agree that damages would not be an adequate remedy if either City or NBCC fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate NBCC if City fails to carry out its obligations

under this Agreement or to compensate City if NBCC fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from NBCC as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for NBCC's Default.

In the event of any Default by NBCC, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to NBCC's Default without recourse from NBCC or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation NBCC's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of NBCC.

10.1 Indemnity Arising From Acts or Omissions of NBCC.

NBCC shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of NBCC or NBCC's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of NBCC relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and NBCC shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify NBCC of any such Claim and City shall cooperate with NBCC in the defense of such Claim. If City fails to promptly notify NBCC of such Claim, NBCC shall not be responsible to indemnify, defend, and hold City harmless from such Claim until NBCC is so notified and if City fails to cooperate in the defense of a Claim NBCC shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in NBCC's indemnity obligation, provided that such counsel shall reasonably cooperate with NBCC in an effort to minimize the total litigation expenses incurred by NBCC. In the event either City or NBCC recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, NBCC shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising

from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by NBCC in connection with NBCC's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

NBCC shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") NBCC's fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "NBCC" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of NBCC's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of NBCC's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Lease Property; and (ii) prior to the effective date of any proposed Transfer, NBCC (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor NBCC and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the NBCC assigns to the successor and the successor assumes from the transferring NBCC all of the rights and obligations of the transferring NBCC with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the NBCC shall continue to be jointly and severally liable to City, together with the successor to NBCC, to perform all of the transferred obligations set forth in or arising under this Agreement unless the NBCC is given a release in writing by City. City shall provide such a release upon the transferring NBCC's full satisfaction of all of the following conditions: (i) the NBCC no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring NBCC is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring NBCC has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor NBCC either (A) provides City with substitute security equivalent to any security previously provided by the transferring NBCC to City to secure

performance of the successor NBCC's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit NBCC in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of NBCC or other affirmative covenants of NBCC, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by NBCC is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by NBCC of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of

emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to:

City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO NBCC:

Newport Beach County Club, Inc.

1600 East Coast Highway
Newport Beach, California, 92660 Attn: Perry
Dickey, President

With a copy to:

International Bay Clubs

1221 West Coast Highway

Newport Beach, California 92663

Attn: Dave Wooten, Chief Executive Officer

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement Severability.

13.10 Severability

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that NBCC shall not receive any of the benefits of this Agreement if any of NBCC's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and NBCC shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of NBCC's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

Both City and NBCC are sophisticated parties who were represented by independent counsel throughout the negotiations or City and NBCC had the opportunity to be so represented and voluntarily chose to not be so represented. City and NBCC each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or

interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and NBCC. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B1 & B2	Overall Site Plan and Overall Site Plan Alternative

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

“NBCC”

_____, a _____

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT B1 and EXHIBIT B2

OVERALL SITE PLAN AND OVERALL SITE PLAN ALTERNATIVE

[TO BE INSERTED]



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Correspondence

Item No. 3a

Newport Beach Country Club

PA2008-152

DATE: November 10, 2011

TO: Kimberly Brandt, Community Development Director
Rosalinh Ung, Associate Planner

FROM: Leonie Mulvihill, Assistant City Attorney *LM*

MATTER: Newport Beach Country Club: Development Agreement
No.: A11-00526

SUBJECT: Transmittal of Development Agreement

Attached please find a copy of the proposed Development Agreement between the City of Newport Beach and The Newport Beach Country Club, Inc.

LM

[A11-00526]-Click here to enter text.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT

between

CITY OF NEWPORT BEACH

and

THE NEWPORT BEACH COUNTRY CLUB, INC.

(Concerning 1600 East Coast Highway)

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DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the __ day of _____, 201__ (the "Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City"), and Newport Beach Country Club, Incorporated ("NBCC"). City and NBCC are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. The Newport Beach Country Club, Incorporated (also referred to herein as NBCC) is the owner and operator of The Newport Beach Country Club subject to a lease with O'Hill Properties, a California limited partnership, Allan Fainbarg and Sara Fainbarg as Trustees of the Fainbarg Family Trust dated April 19, 1982, Mesa Shopping Center-East, a California General Partnership, and Mira Mesa-West, a California limited liability company (the "Lease"), the fee owners of the 132-acre parcel of real property (Property) that is described in the legal description attached hereto as Exhibit A and depicted on the Overall Site Plan attached hereto as Exhibit B1 and Overall Site Plan Alternative Exhibit B2.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 4 of this Agreement, NBCC has agreed to provide a Public Benefit Fee as consideration for this Agreement:

E. This Agreement is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "PR (Parks and Recreation) the Coastal Land Use Plan's designation as "OS (Open Space)" and the Newport Beach Country Club Planned Community District (PA 2008-152) that was adopted in 1997 by Ordinance No. 97-10 and amended in 201__ by Ordinance No. ____ - ____ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration for the Newport Beach Country Club Planned Community District (PA 2008-152 by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On _____, 201_, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 201_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, NBCC, and members of the public. On _____, 201_, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and NBCC agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated

thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*), as the same may be amended from time to time.

“City” shall mean the City of Newport Beach, a California charter city.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Coastal Development Permit” shall mean a permit issued by the California Coastal Commission pursuant to subdivision (a) of Section 30600 of the California Coastal Act.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean the General Plan Land Use Element Amendment, the Newport Beach Planned Community District, Development Plan approved by the City Council

on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

“Development Regulations” shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that impairs or restricts NBCC’s rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by NBCC in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Environmental Laws” means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of

any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended (“RCRA”); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“First Building Permit” shall mean the first building permit that is issued for the project.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, excluding any amendment after the Effective Date that impairs or restricts NBCC’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by NBCC. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or NBCC or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that NBCC is authorized and/or required to construct with respect to each parcel of the Property, as provided in this

Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that NBCC is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Termination Date” and “Lot Termination Date” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City’s zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 NBCC Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

NBCC and each person executing this Agreement on behalf of NBCC hereby represents and warrants to City as follows: (i) that NBCC is the lessee of the Property; (ii) if NBCC or any co-owner comprising NBCC is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if NBCC or any co-owner comprising NBCC is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising NBCC to enter into this Agreement have been taken and that NBCC has the legal authority to enter into this Agreement; (v) that NBCC’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that NBCC or any person or entity comprising NBCC has to any third party; (vi) that neither NBCC

nor any co-owner comprising NBCC is the subject of any voluntary or involuntary bankruptcy petition; and (vii) that NBCC has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting NBCC's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Agreement Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that NBCC's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the tenth (10th) anniversary of the Agreement Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; or (iii) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other NBCC obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

3. Public Benefits.

3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, NBCC shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1st date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. NBCC shall pay the Public Benefit Fee at the following time(s): prior to issuance of the first building permit for the construction of the proposed golf clubhouse. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. NBCC acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and NBCC's vesting rights to be acquired hereunder, and that NBCC expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for NBCC's default, if NBCC shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

4. Development of Project.

4.1 Applicable Regulations; NBCC's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) NBCC shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements

contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest NBCC's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Development of the property includes approval of this Agreement, a General Plan Land Use Element Amendment, The Newport Beach Country Club Planned Community Development Plan, a Mitigated Negative Declaration and Site Development Plans that will allow NBCC to reconstruct the existing 23,469 square foot golf clubhouse to a maximum of 56,000 square feet with a maximum building height of 50 feet, subterranean golf cart parking and storage under the golf clubhouse, a golf course maintenance building and to provide an upgraded project entry, parking and landscaping. The project requires the approval of a Coastal Development Permit by the California Coastal Commission.

NBCC has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. NBCC represents and City acknowledges that NBCC would not make these expenditures without this Agreement, and that NBCC is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

NBCC may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, NBCC may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that NBCC shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that NBCC deems appropriate within the exercise of NBCC's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts NBCC's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and NBCC shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the

Development Regulations, or with respect to such regulations that do conflict, where NBCC has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, NBCC shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to NBCC and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without NBCC's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest NBCC against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override NBCC's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) NBCC does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or NBCC shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and NBCC shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and NBCC agree to preserve the terms of this Agreement and the rights of NBCC as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with NBCC at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon NBCC. City also agrees to process in a prompt manner NBCC's proposed changes to the Project and any of the Development Regulations as may be

necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of NBCC's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent NBCC constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of NBCC or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

5. Amendment or Cancellation of Agreement

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of NBCC.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of NBCC's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. NBCC (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 NBCC Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, NBCC is required to demonstrate good faith compliance with the terms of the Agreement. NBCC agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not NBCC has, for the period under review, complied with the terms of this Agreement. If the City Council finds that NBCC has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that NBCC has not so complied, written notice shall be sent to NBCC by first class mail of the City Council's finding of non-compliance, and NBCC shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of NBCC, NBCC must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If NBCC fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of NBCC's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by NBCC or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the

alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

8.2 Default by NBCC.

If NBCC is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider NBCC's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If NBCC's appeal of the Notice of Default is timely and in good faith but after a public hearing of NBCC's appeal the City Council concludes that NBCC is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of NBCC's appeal is communicated to NBCC.

8.3 City's Option to Terminate Agreement.

In the event of an alleged NBCC Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing NBCC with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if NBCC timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by NBCC. Any such judicial challenge must be brought within thirty (30) days of service on NBCC, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If NBCC alleges a City Default and alleges that the City has not cured the Default within the Cure Period, NBCC may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in NBCC's performance hereunder shall neither be a NBCC Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at NBCC's option (and provided NBCC delivers written notice to City within thirty (30) days of

the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both NBCC and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. NBCC and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate NBCC or City for such efforts. For the above reasons, City and NBCC agree that damages would not be an adequate remedy if either City or NBCC fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate NBCC if City fails to carry out its obligations under this Agreement or to compensate City if NBCC fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from NBCC as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for NBCC's Default.

In the event of any Default by NBCC, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to NBCC's Default without recourse from NBCC or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation NBCC's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of NBCC.

10.1 Indemnity Arising From Acts or Omissions of NBCC.

NBCC shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of NBCC or NBCC's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of NBCC relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and NBCC shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any

Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify NBCC of any such Claim and City shall cooperate with NBCC in the defense of such Claim. If City fails to promptly notify NBCC of such Claim, NBCC shall not be responsible to indemnify, defend, and hold City harmless from such Claim until NBCC is so notified and if City fails to cooperate in the defense of a Claim NBCC shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in NBCC's indemnity obligation, provided that such counsel shall reasonably cooperate with NBCC in an effort to minimize the total litigation expenses incurred by NBCC. In the event either City or NBCC recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, NBCC shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by NBCC in connection with NBCC's Development of the Project. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

NBCC shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") NBCC's fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "NBCC" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of NBCC's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of NBCC's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Lease

Property; and (ii) prior to the effective date of any proposed Transfer, NBCC (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor NBCC and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the NBCC assigns to the successor and the successor assumes from the transferring NBCC all of the rights and obligations of the transferring NBCC with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the NBCC shall continue to be jointly and severally liable to City, together with the successor to NBCC, to perform all of the transferred obligations set forth in or arising under this Agreement unless the NBCC is given a release in writing by City. City shall provide such a release upon the transferring NBCC's full satisfaction of all of the following conditions: (i) the NBCC no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring NBCC is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring NBCC has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor NBCC either (A) provides City with substitute security equivalent to any security previously provided by the transferring NBCC to City to secure performance of the successor NBCC's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit NBCC in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all

of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of NBCC or other affirmative covenants of NBCC, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by NBCC is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by NBCC of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884
Attn: City Manager

With a copy to:

City Attorney
City of Newport Beach
3300 Newport Boulevard
Post Office Box 1768
Newport Beach, California 92663-3884

TO NBCC:

Newport Beach County Club, Inc.

1600 East Coast Highway
Newport Beach, California, 92660 Attn: Perry
Dickey, President

With a copy to:

International Bay Clubs

1221 West Coast Highway

Newport Beach, California 92663

Attn: Dave Wooten, Chief Executive Officer

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that NBCC shall not receive any of the benefits of this Agreement if any of NBCC's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and NBCC shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of NBCC's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

Both City and NBCC are sophisticated parties who were represented by independent counsel throughout the negotiations or City and NBCC had the opportunity to be so represented and voluntarily chose to not be so represented. City and NBCC each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or

entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and NBCC. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B1 & B2	Overall Site Plan and Overall Site Plan Alternative

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange

within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

“NBCC”

_____, a _____

By: _____

Its: _____

By: _____

Its: _____

“CITY”

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Aaron Harp, City Attorney *LM 11/10/11*

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT B1 and EXHIBIT B2

OVERALL SITE PLAN AND OVERALL SITE PLAN ALTERNATIVE

[TO BE INSERTED]



MICHAEL RECUPERO, ESQ.

Correspondence
Item No. 2c & 3b
Newport Beach Country Club
PA2005-140 and PA2008-152

November 16, 2011

Commissioners, Newport Beach Planning Commission
C/O Ms. Kimberly Brandt and Ms. Marlene Burns
CITY OF NEWPORT BEACH
3300 Newport Boulevard
Newport Beach, CA 92663

BY ELECTRONIC MAIL AND U.S. POST (CERTIFIED MAIL)

Re: November 17, 2011 Planning Commission Agenda Items 2 (PA 2005-140) and 3 (PA2008-152)

Dear Commissioners:

This letter is written on behalf of one-half of the ownership of the Newport Beach Country Club and Tennis Club (the "Properties")¹ which you are considering tomorrow night.

Comments on Agenda Item 2 (PA2005-140): Newport Beach Country Club, Inc.

We would reiterate our support for the Newport Beach Country Club, Inc. plan as a reasonable exercise of our tenant's authority to improve the leasehold interest, with the inclusion of the revised frontage road (Attachment 1) as reflected in the most recent staff report.

The Frontage Road. The frontage road is preferable from a planning standpoint, and:

1. Is the preference of the Applicant and the above referenced ownership interests;
2. Has been modified to be one-way, narrowed and provides for more desirable turning movements than originally proposed;
3. Provides a greater landscaping setback from PCH to the parking lot (approximately 20' difference) as compared to the "no frontage road" option;
4. Serves the operational needs of the IBC leasehold as well as the longstanding needs of the adjacent Armstrong Nursery;
5. Is consistent with mandates of the City's traffic engineering constraints.

¹ The Fainbarg Family Trust (managed by Irving Chase), the Mira Mesa Shopping Center-West, and the Mesa Shopping Center-East (managed by Elliot Feuerstein), collectively own 50% of the Properties.



Additionally, Attachment 2, the July 13, 2010 letter from the Tenant to the City, describes why maintaining the frontage road is the most prudent and legally defensible option. This should be considered in conjunction with Attachment 3 which sets out the relevant recorded documents, including the *Termination of Access Easement* document (Recordation No. 19970630399). The *Termination* only purports to conditionally terminate certain historic easements, and not others. Simply stated, the public record suggests that enforceable easement rights to the 26.5-foot easement (See, document Nos. 92-662454 and 93-0139174) continue to exist, in favor of Feuerstein and Fainbarg.

No Encumbrance on Fee Interest. Finally, we understand that the Applicant is required through the IBC Development Agreement to provide security for the leasehold improvements. We understand the Tenant has the right to encumber its leasehold interest, however, we do not consent to any new encumbrance or obligation, recorded or otherwise, which affects the underlying fee.

Comments on Agenda Item 3 (PA2008-152): Golf Realty Fund

We incorporate by reference the earlier letters on file relative to our position on this Planning Application and reiterate our position that Golf Realty Fund lacks the right to unilaterally entitle this property.²

Development Agreement. Inasmuch as the City has been provided with the title report, and the Owner's Agreement, we believe the City's decision to withhold the GRF Development Agreement from our review until yesterday is inequitable and unjustified. The Development Agreement suggests that it is binding on the "Property" as defined in section 2.2. and is required to be recorded. Our review of the law suggests that it be amended to require the consent of the Property owners, not just Golf Realty Fund. It should also set out the City's expectation that future discretionary permits and ministerial (building and grading permits) will require all owners' consent.

Planned Community Text. The current Planned Community Text draft does not adequately provide the owner flexibility to adjust the mixed-use element of the zoning allowed by General Plan Land Use designation MU-H3. As 50% of the ownership of this property has not approved the current development plan, we believe that providing such flexibility, and including a specific provision which allows for staff-level amendment, may ultimately allow the parties and the City to meaningfully address a revised plan on a go forward basis.

² We continue to believe that the City's reliance on the former Newport Beach Municipal Code Section 20.90.030(C) in denying our Client's the right to participate on this project is misplaced when the City is clearly relying on the amended Municipal Code for all other matters related to this project.



Thank you for your consideration.

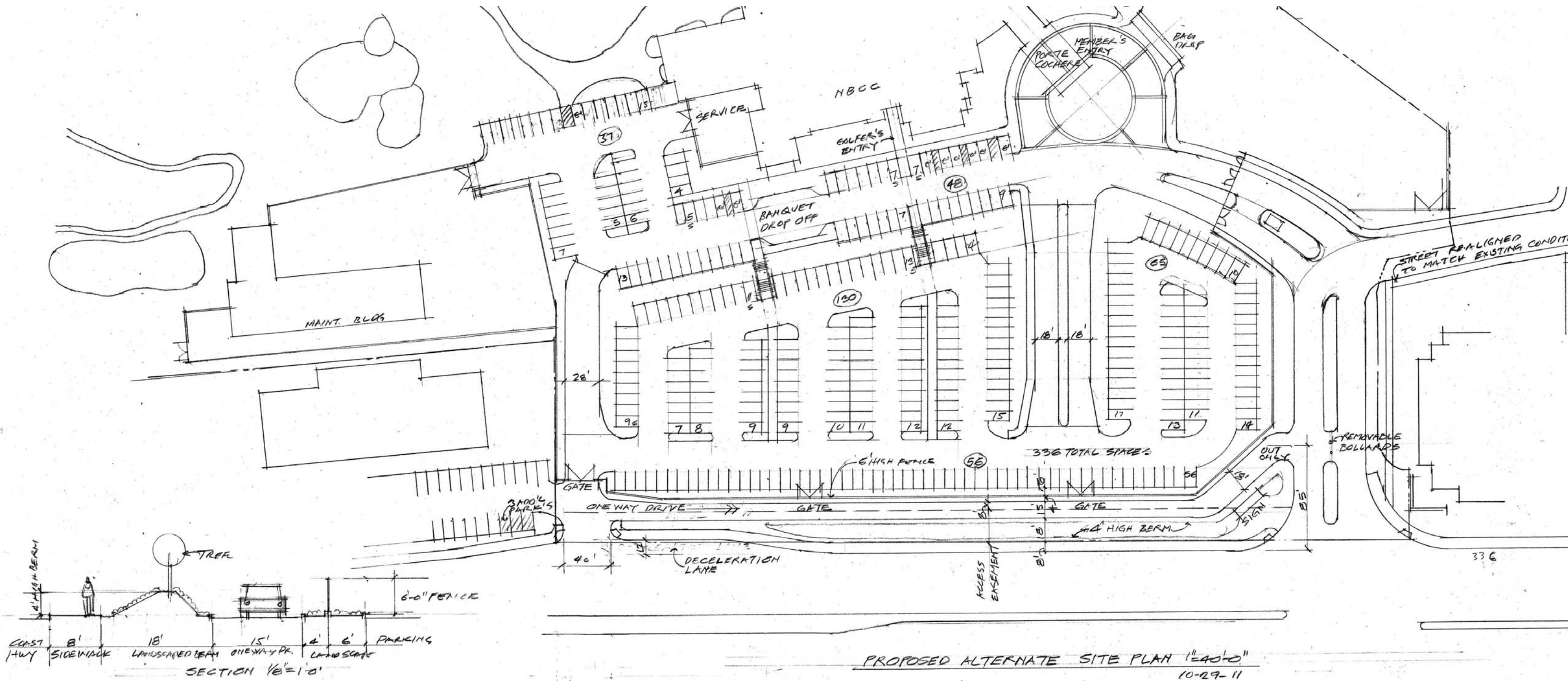
Sincerely,

A handwritten signature in black ink, appearing to be 'WR' with a flourish.

Michael Recupero, Esq.

Ecc:

Commissioner Ameri
Commissioner Kramer
Commissioner Toerge
Commissioner Hawkins
Commissioner Myers
Elliot Feuerstein
Irving Chase
John Olson, Esq.
Tim Paone, Esq.
Leonie Mulvihill, Esq.





July 13, 2010

City of Newport Beach
Attn: Rosalinh Ung
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

Subject: PA 2008–152 Newport Beach Country Club, Frontage Road Access Easement

Dear Ms. Ung:

You recently forwarded to CAA Planning a copy of a First American Title Report (First American Report) dated June 2010 and asked for our review related to the access easement. The First American Report does not identify the existence of an access easement over the frontage road paralleling East Coast Highway. However, the 2008 Fidelity National Title Report (Fidelity Report) submitted by the Newport Beach Country Club (NBCC) does identify this easement. As you know, that easement has been, and continues to be used by motorists who patronize the Armstrong Nursery.

Based on our review of the First American Report, we concur that it does not disclose the 26.5 foot access easement (Instrument No. 93-0139174) identified in the Fidelity Report in favor of Russell Fluter, included as Attachment 1. The Fidelity Report correctly captured the 1993 Easement Deed granted to Russell Fluter by the Irvine Company, included as Attachment 2. As we have previously discussed, a 25 foot access easement over the frontage road held by Messrs Feuerstein and Fainbarg was terminated in 1996. The termination of the 25 foot easement is included as Attachment 3.

Records maintained by the County of Orange Recorder's office show a 2009 quitclaim deed and release of easement (Instrument No. 93-0139174) from Mr. Fluter to Messrs Feuerstein and Fainbarg. The quitclaim deed and release of easement is included as Attachment 4. The County Recorder's office does not show any subsequent action by Mr. Feuerstein or Mr. Fainbarg to terminate the 26.5 foot easement. We can assure the City of Newport Beach that our client, the NBCC, would have gladly foregone the excessive time and resources to produce site plan alternatives retaining the nursery access easement over the frontage road.

You have asked why the 26.5 foot access easement does not show on parcel map 79-704. It is our understanding that parcel maps are not revised or updated to display such easements. This is why the 1980 parcel map does not depict the 26.5 foot easement from 1993. We contacted First American Title Company in an effort to determine why their report does not capture the



Ms. Rosalinh Ung
July 13, 2010
Page 2 of 2

26.5 foot access easement over the frontage road, but they have not responded to our inquiry. In an abundance of caution, the City may wish to inquire of Mr. O'Hill whether he has documentation verifying the termination of the 26.5 foot easement following the 2009 release from Mr. Fluter to Messrs Feuerstein and Fainbarg.

Please contact us at your earliest convenience if you have any questions. Thank you.

Sincerely,

CAA PLANNING, INC.


Shawna L. Schaffner
Chief Executive Officer

cc: Mr. Dave Wooten
Mr. Patrick Alford

Attachments: 1. Excerpt from 2008 Fidelity National Title Report showing 26.5 foot access easement in favor of Russell Fluter
2. 1993 26.5 foot Access Easement Deed
3. 1996 25 foot Access Easement Termination
4. 2009 Quitclaim of Fluter 26.5 foot Access Easement to Feuerstein & Fainbarg



Fidelity National Title Company

PRELIMINARY REPORT

In response to the application for a policy of title insurance referenced herein, Fidelity National Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.


The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Fidelity National Title Insurance Company, a California corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.


Countersigned

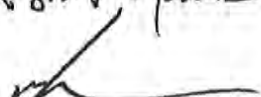


Fidelity National Title Company

BY


President

ATTEST


Secretary



Fidelity National Title Company

ISSUING OFFICE: 1300 Dove Street, Suite 310 • Newport Beach, CA 92660
949 622-5000 • FAX Call for Fax

PRELIMINARY REPORT

Amended

Title Officer: David James

Title No.: 08-**725116135**-A-DJ
Locate No.: CAFNT0972-0972-0051-0725116135

TO: California National Bank
1301 Dove Street, Suite 101
Newport Beach 92660

ATTN: Traci Dawson

SHORT TERM RATE:

PROPERTY ADDRESS: 1600 E. Coast Highway, Newport Beach, California

EFFECTIVE DATE: June 26, 2008, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

ALTA Loan Policy (6/17/06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**ALLAN FAINBARG AND SARA FAINBARG, as Trustees of THE FAINBARG FAMILY TRUST, dated April 19, 1982, as to an undivided 25% interest;
GOLF REALTY FUND, a California limited partnership formerly known as NEWPORT BEACH COUNTRY CLUB, a California limited partnership, as to an undivided 25% interest;
MIRA MESA SHOPPING CENTER-WEST LLC, as to an undivided 10% interest;
MESA SHOPPING CENTER-EAST LLC, as to an undivided 15% interest;
GOLF REALTY FUND, a California limited partnership, as to an undivided 25% interest, all as tenants in common.**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

CJ\JK 07/08/2008

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

AND THAT PORTION OF BACK BAY DRIVE AS SHOWN ON PARCEL MAP NO. 79-704, AS PER MAP FILED IN BOOK 152, PAGES 17 TO 20 OF PARCEL MAPS, THAT WOULD ATTACH BY OPERATION OF THE LAS TO ABUTTING PROPERTY OWNERS BY VACATION RECORDED October 17, 1989 AS INSTRUMENT NO. 89-558952 OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND. TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK, OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NOS. 93-0158178, 93-0158179 AND 93-0158180, ALL OFFICIAL RECORDS.

APN 442-011-51 AND 52

PARCEL B:

PARCEL 3 OF PARCEL MAP NO. 79-704, AS SHOWN ON A MAP FILED IN BOOK 152, PAGES 17 TO 20 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFROM AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE

EXHIBIT "A" (continued)

Title No. 08-**725116135**-A-DJ
Locate No. CAFNT0972-0972-0051-0725116135

SUBSURFACE OF THE LAND, AS RESERVED IN THE DEED FROM THE IRVINE COMPANY, A MICHIGAN CORPORATION, RECORDED MARCH 9, 1993 AS INSTRUMENT NO. 93-0158178, 93-0158179 AND 93-0158180, ALL OF OFFICIAL RECORDS.

APN: 442-011-53

23. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: The Irvine Company
Purpose: Access, ingress, egress, maintenance, repair and landscaping purposes
Recorded: October 24, 1991, Instrument No. 91-582076, of Official Records
Affects: Parcel A

24. Intentionally Deleted

25. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Russell Fluter, a single man
Purpose: Ingress, egress
Recorded: March 1, 1993, Instrument No. 93-0139174, of Official Records
Affects: The Southwesterly 26.50 feet of Parcel B

26. **Covenants, conditions and restrictions** (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the document

Recorded: March 9, 1993, Instrument No. 93-0158176, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

A mortgage with the power of sale executed by O Hill Properties, a California Limited Partnership, as to an undivided 50% interest; Allan Fainbarg and Sara Fainbarg, as Trustees of the Fainbarg Family Trust dated April 19, 1982 as to an undivided 35% interest; Mesa Shopping Center-East, a California General Partnership, as to an undivided 15% interest, all as tenants in common, as Mortgagor to the Irvine Company, a Michigan Corporation as mortgagee, for the purpose of Securing any and all increment of additional purchase price described in Section 3.4 (A) of and as set forth in the above referred to Declaration.

Was subordinated by an instrument recorded September 27, 1994 as Instrument No. 94-0581056 of Official Records, executed by Allan A. Fainbarg and Sara Fainbarg, trustees of the Fainbarg Family Trust dated April 19, 1982, as to an undivided 25% interest, Mesa Shopping Center-East, a California general partnership, as to an undivided 15% interest, Mira Mesa, Shopping Center-West, a California general partnership, as to an undivided 10% interest, O Hill Properties, a limited partnership, as to an undivided 25% interest, and Newport Beach Country Club, a California limited partnership, as to an undivided 25% interest, all as tenants in common, The Irvine Company, a Michigan corporation and Transamerica Life Insurance and Annuity Company, a California corporation, to the deed of trust which was recorded September 27, 1994 as Instrument No. 94-0581054 of Official Records.

#25

DOC # 93-0139174
01-MAR-1993 09:38 AM

RECORDING REQUESTED BY:
CHICAGO TITLE CO.
WHEN RECORDED MAIL TO:

O'NEIL & MYERS
610 Newport Center Drive
Suite 1700
Newport Beach, California 92660
Attention: Paul M. Mowley, Esq.
(415,102-2336)

Recorded in Official Records
of Orange County, California
Los A. Branch, County Recorder
Page 1 of 3 Page 0 11.00
Tax 0 0.00

This Easement Deed is exempt pursuant to Section 1-1-167 of the
Transfer Tax Ordinance of the County of Orange.

CONVEYANCE WITHOUT CONSIDERATION - No Tax Due
Charles S. Myers
Attorney

EASEMENT DEED

(Amalgam's)

The undersigned, THE IRVING COMPANY, a Michigan corporation
("grantor"), hereby grants to Russell Fluter, a single man
("grantee"), non-exclusive easements as set forth in that certain
instrument entitled "Declaration of Access Easements" dated as of
September 29, 1992 and recorded on October 1, 1992 as Instrument
No. 92-662482, as amended by that certain First Amendment to
Declaration of Access Easement dated as of October 15, 1992 and
recorded concurrently herewith, over and across that certain real
property described in Exhibit A attached hereto.

Dated: February 12, 1993

THE IRVING COMPANY,
a Michigan corporation

By:

Richard G. Sim,
Executive Vice President

By:

Donald McQuitt,
Vice President



This document filed for record as
an accommodation only. It has not
been examined as to its execution
or as to its effect upon the title.

STATE OF CALIFORNIA

COUNTY OF ORANGE

88.

On February 12, 1993, before me, a Notary Public in and for said state, personally appeared Richard G. Sia and Donald McWitt, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which such persons acted, executed the instrument.

WITNESS my hand and official seal.



Bonnie L. Reid
Notary Public in and for
said County and State



EXHIBIT A

DESCRIPTION OF EASEMENT AREA

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

ENC-1118571

A-1

10/31/08

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

NBCC LAND
One Upper Newport Plaza
Newport Beach, CA 92660

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



21.00

19970630399 4:29pm 12/08/97

005 22033011 22 42

T01 6 6.00 15.00 0.00 0.00 0.00 0.00

TERMINATION OF ACCESS EASEMENT

THIS TERMINATION OF ACCESS EASEMENT is made as of November 30, 1996, by ARNOLD D. FEUERSTEIN and ALLAN FAIBARG (collectively referred to as "Owners"), who are the fee owners of the property located at 1500 E. Pacific Coast Highway, Newport Beach, California, legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property")

ARTICLE I RECITALS

A. The Property is partially served for ingress and egress by a secondary access road which runs parallel and adjacent to Pacific Coast Highway and is located upon the adjacent Newport Beach County Club property (the "Secondary Access").

B. The Property's rights to use the Secondary Access is by way of that certain non-exclusive easement and right of vehicular and pedestrian ingress and egress set forth in that certain instrument entitled "Declaration of Access Easement" dated as of September 29, 1992 and recorded on October 1, 1992 as Instrument No. 92-662452 in the Official Records of Orange County, California, as amended by that certain First Amendment to Declaration of Access Easement dated as of October 15, 1992 and recorded March 1, 1993 as Instrument No. 93-0139175 in the Official Records, such easement being described on Exhibit "B" attached hereto and incorporated herein by this reference ("the Existing Easement").

C. The City of Newport Beach has requested that the Existing Easement be abandoned because the Secondary Access creates a hazardous traffic condition at the entry to Newport Beach Country Club and contributes to an unsightly condition along Pacific Coast Highway, and Owners concur and are willing to comply with the City's request to abandon the Existing Easement.

D. Owners of the adjacent Newport Beach Country Club property intend to remove the Secondary Access through a portion of the Newport Beach Country Club property described in Exhibit "C" and replace it with landscaping along Pacific Coast Highway per Newport Beach Country Club Master Plan, Tentative Tract 15348, and a landscape plan approved by the City of Newport Beach. The result will be a significant aesthetic improvement along Pacific Coast Highway.

ARTICLE II
TERMINATION OF ACCESS EASEMENT

1. Owners hereby terminate and relinquish their rights in the Existing Easement.

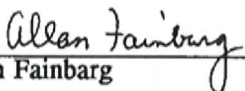
2. Owners' termination of the Existing Easement is conditioned on the City of Newport Beach not prohibiting ingress and egress to the Property primary and direct access from the existing two Pacific Coast Highway curb cuts in front of the Property which have been in use for many years.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first above written.

OWNERS:



Arnold D. Feuerstein

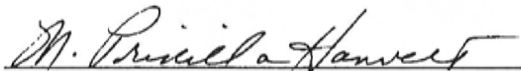


Allan Fainbarg

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Allan Fainbarg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

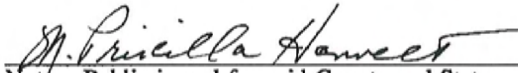

Notary Public in and for said County and State



STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 13, 1996, before me a Notary Public in and for said County and State, personally appeared Arnold D. Feuerstein, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public in and for said County and State



terminat.acc

DESCRIPTION OF PROPERTY

Lot 1 of Tract No. 11937, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 656, Pages 24 through 29, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County, as corrected by that Tract or Parcel Map Certificate of Correction recorded February 5, 1991 as Instrument No. 91-052940 of Official Records.

EXHIBIT "A"

terminat.acc

NON-EXCLUSIVE EASEMENT FOR
INGRESS AND EGRESS PURPOSES

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 25.00 FEET OF PARCEL 3 OF PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

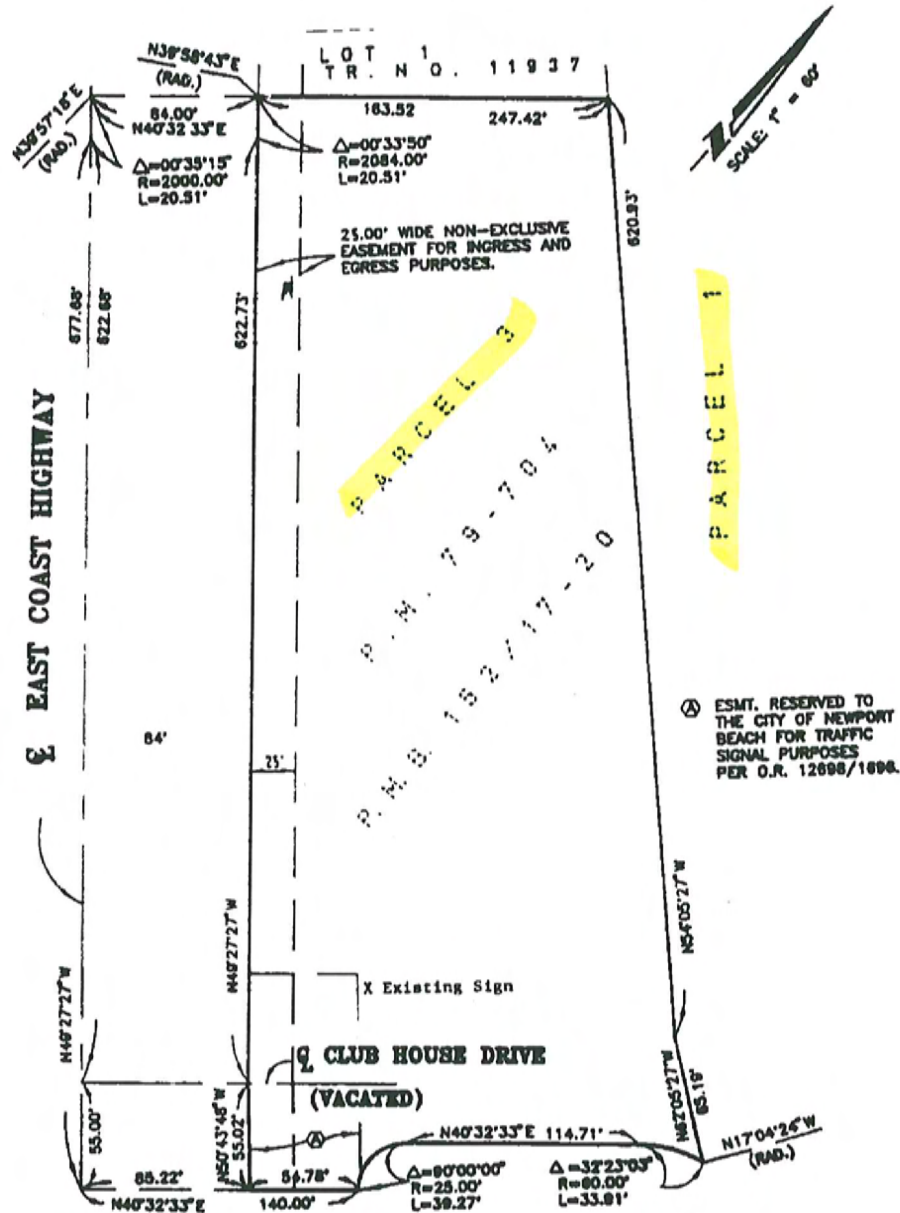


EXHIBIT "B"

terminat.acc

NEWPORT BEACH COUNTRY CLUB

(Portion containing Secondary Access)

Parcel 3 and Parcel 1 of Parcel Map No. 79-704, in the City of Newport Beach, County of Orange, State of California, as shown on a Map recorded in Book 152, Pages 17 through 20, inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

EXHIBIT "C"

terminat.acc

Being Requested By
Fidelity National Title

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
DOCUMENT:**

Arnold D. Feuerstein, Trustee
Allan Fainbarg, Trustee
129 W. Wilson St., Ste. 100
Costa Mesa, CA. 92627
Attention: Irving M. Chase, Esq.

RFluter - DS

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



32.00

2009000658760 02:18pm 12/08/09

106 402 Q01 3

0.00 0.00 0.00 20.00 8.00 0.00 0.00 0.00

Space Above This Line for Recorder's Use Only

MAIL TAX STATEMENTS TO:

Documentary Transfer Tax: \$0

The value and consideration is less than \$100.00 and there is no additional consideration received by the Grantor, R & T 11911

QUITCLAIM DEED AND RELEASE OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **RUSSELL FLUTER**, an individual ("Grantor"), remises, releases and quitclaims to **ARNOLD D. FEUERSTEIN, TRUSTEE OF THE FEUERSTEIN COMMUNITY PROPERTY TRUST** dated **April 13, 1982**, an undivided one-half interest, and **ALLAN FAIBARG, TRUSTEE OF THE FAIBARG FAMILY** dated **April 19, 1982**, an undivided one-half interest, (collectively, "Grantee"), all of the Grantor's right, title, and interest in and to that certain non-exclusive easement granted pursuant to that certain instrument entitled Easement Deed (Amling's) ("Deed") recorded in the Official Records of Orange County, California on March 1, 1993 as Instrument Number 93-0139174, or by any other instrument, as such easement is legally described on Exhibit A ("the Property"), attached hereto and incorporated herein by this reference.

Without limiting the generality of the foregoing, the Grantor hereby releases all rights and obligations associated with the easement pursuant to the Agreement. From and after the date this Quitclaim Deed and Release of Easement is recorded, title to the Easement shall vest in the Grantee.

Grantor has caused this Quitclaim Deed to duly executed on October 23, 2009.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY HAS RECORDED THIS INSTRUMENT
BY REQUEST AS AN ACCOMMODATION ONLY
AND HAS NOT EXAMINED IT FOR REGULARITY
AND SUFFICIENCY OR AS ITS EFFECT UPON
THE TITLE TO ANY REAL PROPERTY THAT
MAY BE DESCRIBED THEREIN.

Russell Fluter
Russell Fluter

EXHIBIT A
Legal Description of Easement

AN EASEMENT FOR INGRESS AND EGRESS PURPOSES OVER THE SOUTHWESTERLY 26.50 FEET OF PARCEL 3 PARCEL MAP NO. 79-704, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 152, PAGES 17 THROUGH 20, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY

A.P.N.:

File No.: dnehaus (dn)

STATE OF California)SS
COUNTY OF Orange)On 10/23/09, before me, Susan L. Walters, Notary
Public, personally appeared Russell F. Luter, who proved to me on the basis of satisfactory evidence to
be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature

My Commission Expires: 7/10/10

This area for official notarial seal

Notary
Name: Susan L. Walters
Notary Registration
Number: 1675021Notary
Phone: 949 722-7400
County of Principal Place of
Business: Orange

Armstrong (Amling) Access Easement

10/24/2011

Instrument	Parties		Description	Width	Date signed	Date recorded
	Grantor	Grantee				
92-662452	Irvine Company	Amling Nursery Owners	Declaration of access easement (Amling's Nursery)	25 feet	9/29/1992	10/1/1992
92-662454	Irvine Company	Russell Fluter-A single man	Grant Deed subject to the Declaration of access easement dated 9-29-1992, recorded concurrently			10/1/1992
93-0139174	Irvine Company	Russell Fluter-A single man	Easement Deed (Amling's)	26.5 feet	2/12/1993	3/1/1993
93-0139175	Irvine Company	Russell Fluter-Amling Nursery Owner	First Amendment to access Easement 92-662452	Increased to 26.5 feet	10/15/1992	3/1/1993
93-0158180	Irvine Company	Fainbarg	Grant Deed	No width specified	3/3/1993	3/9/1993
19970630399	Feuerstein & Fainbarg		Termination of Access Easement 92-662452 & 93-0139175	Document references easement (25 ft.) and amendment (to 26.5 ft.);therefore termination is 26.5 ft.	12/13/1996	12/8/1997
19960167327	Russell Fluter	Fainbarg	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
19960167328	Russell Fluter	Feuerstein	Grant Deed	Grants non-exclusive easements as set forth in 92-662452	4/2/1996	4/4/1996
2009000658760	Russell Fluter	Feuerstein & Fainbarg	Quitclaim Deed and Release of Easement	Release 93-0139174 to Feuerstein and Fainbarg	10/23/2009	12/8/2009

Burns, Marlene

From: Ung, Rosalinh
Sent: Wednesday, November 16, 2011 3:06 PM
To: Burns, Marlene
Subject: GRF - Compromise Plan #11
Attachments: 11.11.16 LS response to IBC-LeeSak comments.doc; ATT28003202.htm; 11.11.15 Comp11.pdf; ATT28003203.htm

For admin record...

From: Leland Stearns [<mailto:LELAND@STEARNSARCHITECTURE.COM>]
Sent: Wednesday, November 16, 2011 1:04 PM
To: Douglas Lee
Cc: Ung, Rosalinh; Brandt, Kim; Tim Paone; Byron de Arakal; Robert O Hill; Campbell, James; Michael Toerge; Bradley Hillgren; Robert C. Hawkins; Fred Ameri; Kory Kramer; Dave Wooten; jjohnson@balboabayclub.com; pdickey@newportbeachcc.com
Subject: GRF/IBC Compromise Plan #11

Per Robert O Hill's request I am sending you Compromise Master Plan #11 and a written response to your memo of Nov. 2, 2011.

November 16, 2011

BY EMAIL:

Doug Lee, AIA
Lee & Sakahara Architects
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Re: NBCC PCD Compromise 11

Attached is Master Plan Compromise 11 responsive to your comment letter dated November 2, 2011.

In my professional opinion, 1) Master Plan Compromise 11 shows that the IBC Golf Clubhouse and the GRF Golf Parking Lot Design can easily work together with IBC's cooperation and 2) GRF's Golf Parking Lot design shown on Master Plan Compromise 11 is a much better aesthetic and pedestrian solution than IBC's golf parking lot.

Below is a detailed response to your letter with their comments shown first in black followed by my responses in blue italics.

- Plan indicates 334 parking spaces but actual count is 327 plus 5 spaces in the Maintenance Yard total count = 332 spaces

Please see the attached Master Plan Compromise 11 where an additional 7 parking spaces have been added and 5 spaces in maintenance yard eliminated for a total of 334. (Parking Required is 244 spaces) If the GRF Golf Parking Lot design is adopted GRF has agreed to make available to IBC the non-exclusive parking easement over Corporate Plaza West for weekends and holidays for an additional 554 additional parking spaces.

- Plan does not address existing access easement. If easement is maintained, this will further reduce parking spaces.

The Frontage Road Easement has been terminated. The City of Newport Beach Planning Commission at their October 2011 hearing indicated that they unanimously desire a golf parking lot site plan without the hazardous and unsightly Frontage Road. If Frontage Road remains the primary loss will be to the significant landscape buffer along PCH and traffic safety. Until that Public hearing IBC has always indicated that IBC preferred a site plan without the Frontage Road.

- Plan does not allow semi-trucks to maneuver in the parking lot. No staging areas for major events.

Please see the LSA Study and Stearns Architecture prior Major Tournament Staging Plan demonstrating that trucks can maneuver in the parking lot and staging areas for major events can be accommodated.

- Plan reduces the upper level prime parking by 32 spaces.

The IBC plan has approximately 80 cars in the upper level parking area. The GRF Compromise 11 has 57 cars in the upper level parking area. The GRF plan makes all the parking better and does not have the significant grade difference between prime golf parking and secondary parking shown in the IBC plan requiring stairways with an extensive number of steps from the very large secondary parking area. Master Plan Compromise 11 has 2 additional parking stalls adjacent to the Golf Clubhouse.

- Plan provides only one sidewalk in the parking lot. Travel distance to the sidewalk at the east parking lot is approximately 290' and approximately 230' at the west parking lot. This layout will encourage members to "cut through" the landscaped islands and between cars (shortest path to the front door.

Two more pedestrian sidewalks have been added in attached Compromise 11. The Master Plan Compromise 11 is more pedestrian and golf cart friendly. (See the LSA Study)

- The primary access to parking from the Porte Cochere is offset requiring two turns to access parking lot.

With both the GRF and the IBC plans there are two turns. With Master Plan Compromise 11 there are two turns when leaving the Porte Cochere and going to the parking area. With the IBC's schematic plan there are two turns when leaving the parking area and returning to the Porte Cochere.

- Plan encroaches 10'-20' into the golf course at the 18th green area.

Please see the revised Master Plan Compromise 11 which eliminates encroachment.

- Plan encroaches into Maintenance Yard.

Please see Master Plan Compromise 11, which eliminates this very minor encroachment.

- 5 spaces in the Maintenance yard should be deleted. This space is allocated for golf course maintenance bins.

See attached Master Plan Compromise 11 where the 5 spaces in the Maintenance Yard have been deleted.

- Due to the terraced parking concept, taller plant material will be required to effectively conceal the automobiles. See attached section.

With the terraced design the goal is not to conceal the cars but to mitigate the "Sea of Asphalt" and to create a far more aesthetic environment and public view from PCH. Much of the time the parking lot is mostly empty.

- Plan indicates reduced service yard.

Please see the attached Master Plan Compromise 11 with no reduction to Maintenance Yard area.

- Plan indicates an 85' driveway along Coast Highway between NBCC and the Nursery. City may have some issues.

Please see Master Plan Compromise 11, which eliminates the 85' driveway and is now identical to IBC's Preliminary Site Plan.

- Orientation of the Clubhouse has changed.

The Golf Clubhouse in Compromise 11 is now in the identical location as IBC's Preliminary Site Plan.

On a related point since I have not heard back from you regarding development of the cohesive, comprehensive Landscape Plan, Master Plan Lighting and Sign Plan which I assume we are in agreement on doing.

Sincerely yours,

Leland Stearns

ec: Michael Toerge, City of Newport Beach, Planning Commissioner
 Bradley Hillgren, City of Newport Beach, Planning Commissioner
 Robert Hawkins, City of Newport Beach, Planning Commissioner
 Fred Ameri, City of Newport Beach, Planning Commissioner
 Kory Kramer, City of Newport Beach, Planning Commissioner
 Kim Brandt, City of Newport Beach, Community Development Director
 Jim Campbell, City of Newport Beach, Principal Planner
 Rosalinh Ung, City of Newport Beach, Associate Planner
 Dave Wooten, IBC, President & CEO
 Jerry Johnson, IBC, EVP & CFO
 Perry Dickey, Newport Beach Country Club, President
 Tim Paone
 Byron de Arakal
 ROH

s t e a r n s
 ARCHITECTURE

